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113  
No. 2452

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IN THE  
UNITED STATES CIRCUIT COURT  
OF APPEALS  
FOR THE NINTH CIRCUIT

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CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee,

Appellee,

vs.

PACIFIC COAST PIPE COMPANY, a Corporation,  
Appellant,

and

KINGS HILL IRRIGATION & POWER COM-  
PANY, ET AL.,

Defendants.

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**TRANSCRIPT OF THE RECORD**

**Upon Appeal from the United States District Court  
for the District of Idaho, Southern Division.**

**Filed**

JUL 28 1914







No. ....

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*In the District Court of the United States for the  
District of Idaho, Southern Division.*

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DECEMBER TERM, A. D. 1912.

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IN EQUITY.

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CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee,  
Complainant,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation, GLENNS FERRY  
CANAL COMPANY, LIMITED, a Corporation,  
PACIFIC COAST PIPE COMPANY, a Corpora-  
tion, KINGS HILL EXTENSION IRRIGATION  
COMPANY, LIMITED, a Corporation, MIN-  
NEAPOLIS STEEL AND MACHINERY COM-  
PANY, a Corporation, and C. R. SHAW,  
Defendants.

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*In Equity.*

---

BILL OF COMPLAINT.

*To the Honorable, The Judge of the District Court of  
the United States in and for the District of  
Idaho, in Equity Sitting:*

The Continental and Commercial Trust and Sav-  
ings Bank, a corporation organized and existing un-

der and by virtue of the laws of the State of Illinois, and a citizen and resident of the State of Illinois, as Trustee, and having its principal place of business in the City of Chicago, and State of Illinois, brings this, its bill of complaint against Kings Hill Irrigation & Power Company, a corporation, duly organized under and by virtue of the laws of the State of Nevada, and a citizen and resident of the State of Nevada, and Glenns Ferry Canal Company, Limited, a corporation, organized under and by virtue of the laws of the State of Idaho, and a citizen and resident of the State of Idaho, and the Pacific Coast Pipe Company, a corporation, organized under the laws of the State of Washington, and a citizen and resident of the State of Washington, and Kings Hill Extension Irrigation Company, Limited, a corporation organized under the laws of the State of Idaho, and a resident and citizen of the State of Idaho, and Minneapolis Steel and Machinery Company, a corporation organized under the laws of the State of Minnesota, and a citizen and resident of the State of Minnesota, and C. R. Shaw, a citizen and resident of the State of Idaho, and therefore your orator complains and shows as follows:

1. That your orator, the Continental and Commercial Trust and Savings Bank, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois; that its principal place of business is in the city of Chicago, State of Illinois, and it is a citizen and resident of the State of Illinois;

2. That for many years prior to the 1st day of August, 1910, the name of your orator was "The American Trust and Savings Bank"; and that on or about the 1st day of August, 1910, the name of your orator was changed under and in accordance with the laws of the State of Illinois from "The American Trust and Savings Bank" to "Continental and Commercial Trust and Savings Bank"; that your orator was during all times hereinafter referred to and now is duly authorized by law to accept and execute trusts, and to act as Trustee of mortgages and deeds of trust in the nature of mortgages; that your orator is the same corporation which, on the 2nd day of November, 1908, was named and designated in the mortgage or deed of trust hereinafter described as the "American Trust and Savings Bank".

3. That the defendant, Kings Hill Irrigation and Power Company is a corporation duly organized under and by virtue of the laws of the State of Nevada, and is a citizen and resident of the said State of Nevada, and has its principal place of business in said State, and that it also transacts business in the State of Idaho under a license or permit issued to it by the proper officers of said State; that the defendant, Glens Ferry Canal Company, Limited, is a corporation organized under and by virtue of the laws of the State of Idaho, and is a citizen and resident of the State of Idaho, and has its principal place of business in said State; that the defendant, Pacific Coast Pipe Company, is a corporation organized un-



der the laws of the State of Washington and is a citizen and resident of said State of Washington, and has its principal place of business in said State; that the defendant, Kings Hill Extension Irrigation Company, Limited, is a corporation organized under the laws of the State of Idaho, and is a citizen and resident of the State of Idaho, and has its principal place of business in said State. That the defendant, Minneapolis Steel and Machinery Company, is a corporation organized under the laws of the State of Minnesota, and is a citizen and resident of said State of Minnesota, and has its principal place of business in the City of Minneapolis in said State; that the defendant, C. R. Shaw, is a citizen and resident of the State of Idaho, residing in the City of Boise in said State.

4. That on or about the 2nd day of November, A. D. 1908, the defendant, Kings Hill Irrigation & Power Company, executed and delivered to your orator a certain Deed of Trust or Indenture of Mortgage, a copy of which is filed herewith and made a part hereof, and marked, "Exhibit A", which your orator prays may be taken and considered as part of this Bill of Complaint, as fully and to the same extent, to all intents and purposes, as if it were herein set forth at large.

5. That the said Deed of Trust or Indenture of Mortgage was duly executed and acknowledged by the said defendant, Kings Hill Irrigation & Power Company, by its duly authorized officers, the execu-

tion being in six counterparts; and afterwards, to-wit: on the 8th day of December, A. D. 1908, an original copy thereof was filed for record in the office of the County Recorder of Lincoln County, Idaho, and by said Recorder recorded in Book 4 of Mortgages, at page 340; and that a duplicate original thereof was also filed in said office on said day, and a minute thereof made in Book 1 of the Record of Chattel Mortgage, on page K, which duplicate original was and is kept on file at said office; that on the 9th day of December, A. D. 1908, an original copy thereof was filed for record in the office of the County Recorder of Owyhee County, Idaho, and by said Recorder recorded in Book 7 of Mortgages, at page 575; and that a duplicate original thereof was also filed in said office on said day, and a minute thereof made in Book 2 of the Record of Chattel Mortgages, on page 5, which duplicate original was and is kept on file at said office; that on the 8th day of December, A. D. 1908, an original copy thereof was filed for record in the office of the County Recorder of Twin Falls County, Idaho, and by said Recorder recorded in Book 5 of Mortgages, at page 517; and that a duplicate original thereof was also filed in said office on said day, and a minute thereof made in Book 1 of the Record of Chattel Mortgages, on page . . . ., which duplicate original was and is kept on file at said office; all of which will more fully appear from the certificates of acknowledgement and of recording endorsed on said Deed of Trust or Indenture of Mortgage, the originals of which are

in the possession of your orator, ready to be produced in court on the hearing hereof.

6. That on or about the 1st day of March, A. D. 1909, the defendant, Kings Hill Irrigation & Power Company, and your orator, executed a certain Indenture, amending, and containing certain amendments of, the said Deed of Trust or Indenture of Mortgage theretofore (to-wit: on or about the 2nd day of November, A. D. 1908), executed and delivered by said Kings Hill Irrigation & Power Company; a copy of said Indenture of Amendment is filed herewith and made a part hereof, and marked "Exhibit B", which your orator prays may be taken and considered as a part of this Bill of Complaint as fully and to the same extent, to all intents and purposes, as if it were herein set forth at large.

7. That said Indenture of Amendment was duly executed and acknowledged by said Kings Hill Irrigation & Power Company and by your orator, and afterwards, to-wit: on the 19th day of March, 1909, an original copy thereof was filed for record in the office of the County Recorder of Lincoln County, Idaho, and by said Recorder recorded in Book 4 of Mortgages at page 391, and that on the 20th day of March, A. D. 1909, an original copy thereof was filed for record in the office of the County Recorder of Owyhee County, Idaho, and by said Recorder recorded in Book 8 of Mortgages at page 26, and that on the 23rd day of March, A. D. 1909, an original copy thereof was filed for record in the office of the County Re-



corder of Twin Falls County, Idaho, and by said Recorder recorded in Book 7 of Mortgages at page 96; all of which will more fully appear from the certificates of acknowledgment and of recording indorsed on said Indenture of Amendment, the originals of which are in the possession of your orator, ready to be produced on the hearing hereof.

8. That in and by said Deed of Trust or Indenture of Mortgage ("Exhibit A" aforesaid) there was granted, bargained, sold, conveyed and warranted to your orator as security for the payment of the indebtedness hereinafter referred to, all of the following property, together with all rents, issues, interests, incomes and profits from the same, all the real property of which was and is situated and lies in the Counties of Lincoln, Owyhee and Twin Falls, in the State of Idaho, to-wit:

1. Dam and Headworks.

All of the right, title and undivided interest of the mortgagor in that certain dam located in and across the Malad River, Lincoln County, State of Idaho, at a point on said river near the north and south line between the northwest quarter of the northwest quarter and the northeast quarter of the northwest quarter of Section 35, Township 6, South of Range 13 East, Boise base and meridian, the said point being approximately south 75 degrees 22 minutes, east 1195.5 feet from the southeast corner of Section 27, said township and range;

## 2. Works on Malad River.

All the right, title, and undivided interest of the mortgagor in and to that certain canal, ditch, flume, headgate and headworks, through and by means of which water is diverted from said Malad River at the dam above described, and running thence along the right bank of said river for a distance of about 5600 feet to the siphon pipe, hereinafter described, across Snake River;

## 3. Siphon Pipe and Bridge.

The inverted siphon pipe about 1400 feet in length, by means of which the said waters of the Malad River are carried, conveyed and conducted across Snake River in the southwest quarter of the southwest quarter of said Section 27, said township and range, and that certain steel span bridge, across said Snake River carrying and supporting said siphon pipe;

## 4. Entire System South Side Snake River.

All canals, ditches, laterals, headgates, flumes, and the entire irrigation system of the mortgagor, commencing at the end of the siphon pipe above described, on the south side of Snake River in the southwest quarter of the southwest quarter of said Section 27 and extending thence in a general westerly direction on the south side of Snake River through Sections 28, 21, 20, 17, 18, and 7, Township 6 South of Range 13 East, and through Sections 12, 11, 14, 15, 16, 17, 8, 7, and 18 in Township 6 South of

Range 12 East, and Sections 13, 14, 15, 22, 21, 15, 17, 8, 9, and 4, and to a point near the center of Section 5 in township 6 South of Range 11 East, the same being the terminus of the main canal; with all laterals, ditches, flumes and pipe lines and siphon pipes extending and leading from the said canal above described, and from the terminus thereof and used for the irrigation of lands or domestic purposes in said Lincoln, Twin Falls, Owyhee Counties, Idaho; the lower or northwesterly end of said irrigation system extending to a point near the northeast corner of Section 33, Township 5 South of Range 10 East, B. M.;

#### 5. Rights of Way.

All the rights of way, easements, privileges and franchises for the dam, canals, ditches, laterals, pipe lines, siphon pipes and irrigation system above described, now owned by the mortgagor, or which it may hereafter acquire;

#### 6. Water Locations and Permit.

All the right, title and undivided interest which the mortgagor has in and to the waters of said Malad River under and by virtue of that certain water location of 500 cubic feet per second, made on the 26th day of March, 1902, by Herman Rapp and Ernest Pearsons; and under that certain water location made by the Glenns Ferry Land & Irrigation Company, Limited, on the 7th day of August, 1902, for 500 cubic feet per second, and under that certain permit known as Permit No. 438 and issued by the

State Engineer of the State of Idaho on the 23rd day of January, 1904, for 1100 cubic feet per second;

#### 7. Contracts with State of Idaho.

All the rights, grants, interests, privileges, easements and franchises acquired by the mortgagor under the contract dated May 1st, 1908, between the State of Idaho through its State Board of Land Commissioners and the mortgagor, as well as under any similar or other contract theretofore entered into between the same parties or between the State of Idaho and the predecessor in interest of the said mortgagor, including all the right, title, and interest of the said mortgagor, of whatsoever kind which the mortgagor may have in and to its said irrigation system, and the right to sell, or contract for the sale of water rights or shares in said irrigation works and system and shares of the capital stock of the Glenns Ferry Canal Company, Limited, hereinafter referred to—subject, however, to all of the provisions herein contained as to the exclusive exercise of such rights of sale by the mortgagor prior to the occurrence of a default hereunder;

#### 8. Water Right Contracts and Mortgages.

All such contracts heretofore made or which may be hereafter entered into by the Company for the purchase of water rights and shares in said irrigation system, described in said contract of May 1st, 1908, or mortgages, constituting, to the extent of the unpaid portion of the purchase price of said



water rights, first liens on the lands irrigated thereunder, as shall be deposited with the Trustee and assigned in writing by the Company to the Trustee and the assignment thereof recorded in the office of the County Recorder of the County where the land upon which the contract or mortgage constitutes a lien, may be situated, it being understood and agreed that the assignment and deposit by the Company of any contracts for the sale of water rights or shares in said irrigation system, or mortgages securing the purchase price thereof, shall not be valid or effectual for the purpose of constituting collateral, against which bonds may be certified and delivered by the Trustee, unless the Company shall at the time of the assignment or the deposit of such contracts or mortgages, also deposit with the Trustee certificates duly endorsed in blank, or otherwise properly assigned, for fully paid shares of the capital stock (in the ratio of one share of said stock for each one-eighthieth of a cubic foot per second of time of water which is permitted to be taken from said irrigation system by such contract of purchase for land irrigated under such contract) of the Glenns Ferry Canal Company, Limited, a corporation organized and existing under the laws of the State of Idaho, being the corporation to be formed at the instance of the Company under the terms and provisions of the contract between the Company and the State of Idaho, dated May 1st, 1908, for the purpose of providing a convenient method of transferring the ownership of said irrigation system from the Com-

pany to the purchasers of water rights or shares therein, and for determining the rights of said purchasers among themselves, and for operating and maintaining said system, all as provided in Article IX of said contract, to which reference is hereby made for a fuller statement of the method of such transfer, the nature and rights of such shares, the method of such operation, and the purpose and powers of such corporations;

9. Stock and Agreements Glenns Ferry Canal Co., Ltd.

All the right, title and interest of the Company in and to the stock of the said Glenns Ferry Canal Company, Limited.

9. That the conveyance aforesaid of your orator by the said Deed of Trust or Indenture of Mortgage and the amendments thereto was made for the purpose of securing the payment of the issue of coupon bonds of the said Kings Hill Irrigation & Power Company then about to be issued and negotiated by it, consisting of 655 bonds of an aggregate face value of Five Hundred Thousand Dollars (\$500,000.00), 405 of said bonds being of the face value of One Thousand Dollars (\$1000.00) each, 175 of said bonds being of the face value of Five Hundred Dollars (\$500.00) each and 75 of said bonds being of the face value of One Hundred Dollars (\$100.00) each, which bonds in the amounts of their aggregate face value specified below were to become and be due and payable at the office of your orator in the City

of Chicago, State of Illinois, on the 1st day of May of the respective years specified below, to-wit:

Maturity.	Amount.
May 1, 1911 .....	\$ 60,000.00
May 1, 1912 .....	60,000.00
May 1, 1913 .....	70,000.00
May 1, 1914 .....	70,000.00
May 1, 1915 .....	70,000.00
May 1, 1916 .....	70,000.00
May 1, 1917 .....	100,000.00

And to each of which bonds there were attached interest coupons payable on the first day of May and November in each of the years between the date and the maturity of said respective bonds, and at the maturity thereof, which coupons were to evidence and did evidence the semi-annual installments of interest to accrue on said bonds in accordance with the terms and provisions thereof, each coupon being in every instance for an amount equal to Three Per Cent (3%) of the principal sum of face value of the bond to which it was attached.

10. That 463 of said 655 bonds, representing an aggregate principal sum of Three Hundred Fifty-eight Thousand Four Hundred Dollars (\$358,400.00) were executed by the said Kings Hill Irrigation & Power Company, and subsequently duly certified by your orator, as Trustee, and thereafter issued, delivered and negotiated in accordance with the terms and provisions of said Deed of Trust or Indenture of Mortgage to your orator, and the

amendments aforesaid thereto, which bonds are by their terms due on the following dates in the following amounts of principal sums:

Maturity.	Amount.
May 1, 1911 .....	\$40,000.00
May 1, 1912 .....	40,000.00
May 1, 1913 .....	50,000.00
May 1, 1914 .....	50,000.00
May 1, 1915 .....	50,000.00
May 1, 1916 .....	50,000.00
May 1, 1917 .....	78,400.00

And that the said 463 bonds so issued, certified and negotiated, are now outstanding and unpaid, and are held by the purchasers thereof in good faith and for value; that no suit or action at law has at any time been had, brought or commenced to recover the principal of said bonds or the interest that has accrued thereon, or either thereof, or any part of either thereof.

11. That the stockholders and directors of the said defendant, Kings Hill Irrigation & Power Company, duly and legally authorized the execution and delivery of the said Deed of Trust or Indenture of Mortgage (Exhibit A), and of the amendment thereto (Exhibit B), and also authorized the execution and delivery of the bonds thereby secured to be paid; that the said Deed of Trust or Indenture of Mortgage (Exhibit A), and the said amendment thereto (Exhibit B), were each duly approved by the Attorney General of the State of Idaho, as provided by



the laws of the State of Idaho; and that all acts and things required by law and by the by-laws of the said defendant, Kings Hill Irrigation & Power Company, and necessary to make the said Deed of Trust or Indenture of Mortgage, and the amendment thereto, and the bonds and interest coupons secured to be paid thereby, valid, legal and binding instruments and obligations of said Kings Hill Irrigation & Power Company have been done, performed, observed and complied with.

12. That prior to the certification, issuance or delivery of the 463 bonds mentioned in paragraph 10 of this Bill, as your orator is informed and believes, all and every of the requirements and conditions of said Deed of Trust or Indenture of Mortgage, as amended, with reference to the issue and certification of bonds secured thereby, and all acts and things authorized or required by law and by the by-laws of the said defendant, Kings Hill Irrigation & Power Company, and necessary to make the bonds aforesaid the valid, legal, binding and negotiable obligations of the said defendant, Kings Hill Irrigation & Power Company, had occurred, been performed and been complied with.

13. That in and by said Deed of Trust or Indenture of Mortgage, as amended, it was expressly stipulated, provided and agreed that every certificate of your orator upon any bond appearing to have been executed upon behalf of the said defendant, Kings Hill Irrigation & Power Company, should be conclu-

sive evidence that the bond so certified was duly issued under the said Deed of Trust or Indenture of Mortgage, and was entitled to the benefit of the trust thereby created.

14. That in and by the said Deed of Trust or Indenture of Mortgage, as amended, the said defendant, Kings Hill Irrigation & Power Company, among other things covenanted and agreed as follows, to-wit:

(a) To duly and punctually pay or cause to be paid to every holder of any bond issued and secured thereunder, the principal and interest accruing thereon at the dates and place, and in the manner mentioned in such bonds, and in the coupons thereto belonging, according to the true intent and meaning thereof:

(b) That the face value of the payments (exclusive of interest to become due on such payments), to become due on contracts for the purchase from it of water rights, and the mortgages to secure the payment thereof, which it should from time to time assign to and deposit with your orator for the purpose of securing the payment of principal and interest on the bonds to be issued under said Deed of Trust or Indenture of Mortgage, should at all times be, and be kept, equal to One Hundred Fifty Per Cent (150%) of the face value of the bonds then outstanding under said Deed of Trust or Indenture of Mortgage (excepting so far as funds should be on deposit with your orator, applicable to the payment

of principal of the bonds, and to the extent that such funds should be sufficient to pay bonds at their maturity and all interest which should accrue to such maturity).

15. That in and by the aforesaid Deed of Trust or Indenture of Mortgage, as amended, it was expressly stipulated and agreed that in case (1) the grantor or mortgagor therein, being the defendant, Kings Hill Irrigation & Power Company, herein, should make default in the payment of any interest on any bond or bonds secured thereby, and any such default should have continued for a period of three months, or in case (2) it should make any default in the due and punctual payment of the principal of any bonds secured thereby, or in case (3) default should be made in the due observance or performance of any other covenant or condition therein required to be kept or performed by the said Kings Hill Irrigation & Power Company, and if such default should have continued for a period of three months after written notice to said defendant from your orator, or from the holders of Twenty-five Per Cent (25%) in amount of the bonds aforesaid, then outstanding, or in case (4) any receiver or trustee of the said Kings Hill Irrigation & Power Company, its property and business, should be appointed or secured otherwise than under said Deed of Trust or Indenture of Mortgage, and the said Kings Hill Irrigation & Power Company should not within ten days after the appointment thereof procure the vacation of such appointment, and the surrender of all of the

property and business of the said Kings Hill Irrigation & Power Company, into the custody of its proper corporate officers and agents; then in such case your orator might, and upon the written request of the holders of a majority in amount of the bonds thereby secured and then outstanding, should, by notice in writing delivered to the said Kings Hill Irrigation & Power Company, declare the principal of all bonds thereby secured and then outstanding to be due and payable immediately, and that upon such declaration being made the said bonds should become and be due and payable immediately, anything in said Indenture or in said bonds contained to the contrary notwithstanding.

16. That in and by the aforesaid Deed of Trust or Indenture of Mortgage, as amended, it was expressly stipulated and agreed that in case (1) the grantor or mortgagor therein, being the defendant, Kings Hill Irrigation & Power Company, herein, should make default in the payment of any interest on any bond or bonds secured thereby, and any such default should have continued for a period of three months, or in case (2) it should make any default in the due and punctual payment of the principal of any bonds secured thereby, or in case (3) any receiver or trustee of the said defendant, Kings Hill Irrigation & Power Company, or of its property and business, should be appointed or secured otherwise than under said Deed of Trust or Indenture of Mortgage, and said Kings Hill Irrigation & Power Company should not within ten days from the date of the



appointment thereof procure the vacation of such appointment and the surrender of all of the property and business of the said Kings Hill Irrigation & Power Company into the custody of its own proper corporate officers and agents, or in case (4) default should be made in the due observance or performance of any other covenant or condition therein required to be kept or performed by the said Kings Hill Irrigation & Power Company, and any such default should have continued for a period of three months after written notice thereof to the said Kings Hill Irrigation & Power Company from your orator, or from the holders of Twenty-five Per cent (25%) in amount of the bonds thereby secured and then outstanding, that then in each and every such case your orator in its discretion, with or without entry, personally or by attorney (a) should sell to the highest and best bidder all and singular the right, title and interest of the said Kings Hill Irrigation & Power Company in and to the mortgaged property, premises, interests, rights, contracts, mortgages, franchises and appurtenances of every kind, and the right of redemption thereof, in one lot and as an entirety, (unless the holders of a majority in amount of the bonds thereby secured and then outstanding should in writing request your orator to cause the same to be sold in parcels, or unless such sale as an entirety should be impracticable by reason of some statute or other cause), which sale or sales should be made at public auction at such place and upon such terms as your orator might fix or specify in

the notice of sale, to be given as in said Indenture provided, and as should be required by law; or (b) should proceed to protect and enforce the rights of your orator and the rights of bondholders under said Indenture, by suit or suits in equity or at law, or by any other proper judicial proceeding, whether for the specific performance of any covenant or agreement contained therein, or in the aid of the execution of any power therein granted, or for the foreclosure of said Indenture, or for the enforcement of any other appropriate remedy, as your orator should deem most effectual to protect or enforce any rights or equities of your orator therein.

17. That in and by the aforesaid Deed of Trust or Indenture of Mortgage, as amended, it is further expressly stipulated, provided and agreed that the purchase money, proceeds and avails of any sale held pursuant thereto, whether under the power of sale thereby granted or pursuant to judicial proceedings, together with any other sums which might then be held by your orator under any of the provisions of said Indenture as part of the trust estate, should be applied as follows:

*First.* To the payment of the costs and expenses of such sale and of any action or judicial proceeding, including a reasonable compensation to your orator, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by your orator in the keeping, maintaining, operating or completing

of construction of the property thereby mortgaged, and in discharging its trust, and to the payment of all taxes and assessments and other liens prior to the lien of said Indenture, except any taxes, assessments or other superior liens to which such sales should have been made subject.

*Second.* To the payment of the whole amount then owing or unpaid upon the bonds thereby secured for principal and interest, and in case such proceeds should not be sufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest, without preference or priority of principal over interest or interest over principal, or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and accrued and unpaid interest; subject, however, to provisions deferring coupons which should have been transferred apart from the bonds to which they should belong.

*Third.* To the payment of the surplus, if any, to the said defendant, Kings Hill Irrigation & Power Company, its successors or assigns, or to whomsoever might be lawfully entitled to receive the same, or as the Court might direct.

18. That in and by the aforesaid Deed of Trust or Indenture of Mortgage, as amended, it was further

expressly stipulated, provided and agreed that upon the filing of a bill in equity, or upon the commencement of any other judicial proceeding to enforce any right of your orator, or of the bondholders, under said Indenture, your orator should be entitled, as a matter of right, to the appointment of a receiver of the property thereby mortgaged, and of the earnings, income, revenue, rents, issues or profits thereof, with such powers as the Court making such appointment should confer, and that your orator should be entitled to the same notwithstanding a previous appointment of a receiver in any manner other than as provided for in said Indenture.

19. That in and by the said Deed of Trust or Indenture of Mortgage, as amended, it was further expressly stipulated, provided and agreed, and that in case of any default as above specified it should be the duty of your orator upon the written request of the holders of Twenty-five Per Cent (25%) in amount of the bonds thereby secured and then outstanding, and upon being furnished with reasonable and satisfactory indemnity against any expense or liability in which it might become involved, to take all needful steps for the protection and enforcement of the rights of your orator and the rights of the holders of the bonds thereby secured, and to exercise the powers of entry or sale therein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as your orator should deem most expedient, in the interest of the holders of the bonds thereby secured.



20. That in and by the said Deed of Trust or Indenture of Mortgage, as amended, it was further stipulated, provided and agreed that sales made thereunder, whether under the power of sale thereby granted and conferred, or under or by virtue of judicial proceedings, should operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the said defendant, Kings Hill Irrigation & Power Company, or, in or to the property sold, and should be a perpetual bar, both at law and in equity, against it, its successors and assigns, and against any and all persons claiming or to claim the same, or any part thereof, from, through or under it, its successors or assigns.

21. That in and by the said Deed of Trust or Indenture of Mortgage, as amended, it was further expressly stipulated, provided and agreed that the said defendant, Kings Hill Irrigation & Power Company, would not at any time insist upon or plead, or in any manner whatever claim or take the benefit or any advantage of any stay or extension law then or at any time thereafter in force in the locality where the mortgaged property was situate or elsewhere, and that it would not claim, take or insist on any benefit or advantage from any law then or thereafter in force, providing for the valuation or appraisal of the mortgaged property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision therein contained, or to the decree of any judicial tribunal of competent jurisdiction; and that after any such sale or sales it would

not claim or exercise any right under any law to redeem the property so sold, or any part thereof; and the said defendant thereby expressly waived all benefit and advantage of any such law or laws; and covenanted that it would not hinder, delay or impede the execution of any power therein granted or delegated to your orator, but that it would suffer and permit the execution of every such power, as though no such law or laws had been made or enacted.

22. That in and by the said Deed of Trust or Indenture of Mortgage, as amended, it was further expressly stipulated, provided and agreed that no holder of any bond or coupon thereby secured should have a right to institute any suit, action or proceeding in equity or at law for the foreclosure of said Indenture, or for the execution of any trust thereof, or for the appointment of a receiver, or for any other remedy thereunder unless such holder should previously have given to your orator written notice of an existing default and of the continuation thereof, nor unless also the holders of Twenty-five Per Cent (25%) in amount of the bonds thereby secured, then outstanding, should have made written request to your orator, and should have afforded to it a reasonable opportunity, either to proceed to exercise the powers therein granted, or to institute such action, suit or proceeding in its own name; nor unless also they should have afforded to your orator adequate security and indemnity against the costs, expenses and liabilities to be incurred by it therein, or thereby, and your orator should have unreasonably refused

to comply with such request; and such notification, request and offer of indemnity were therein declared in every such case at the option of your orator to be conditions precedent to the execution of the powers and trusts of said Indenture, and to any action for foreclosure or for the appointment of a receiver, or for any other remedy thereunder; it being the intention of said Deed of Trust or Indenture of Mortgage, as amended, that no one or more of the holders of bonds and coupons thereby secured should have any right in any manner whatever to affect, disturb or prejudice the lien of said instrument by his or their action, or to enforce any right thereunder, except in the manner therein provided, and that all judicial proceeding should be instituted and maintained in the manner therein provided, and for the equal benefit of all holders of such bonds and coupons.

23. That subsequent to the execution of the aforesaid Indenture of Mortgage or Deed of Trust there were deposited with, and assigned in writing to your orator, by the said defendant, Kings Hill Irrigation & Power Company, the following described contracts, entered into by the said Kings Hill Irrigation & Power Company, for the purchase of water rights and shares in its irrigation system, which assignments were in all cases recorded in the offices of the County Recorders of the respective counties where the lands, upon which said contracts constituted liens, were situated; there being deposited with your orator in each instance certificates, duly in-

dorsed in blank, for fully paid shares of capital stock of the Glenns Ferry Canal Company, Limited, a corporation, such deposits, assignments and records being in accordance with the provisions of said Indenture of Mortgage, as amended, and of sub-paragraph 8 of paragraph 8 of this Bill; and that the said contracts and each thereof are now in the hands of your orator. Said contracts are enumerated below, there being specified (in appropriate columns) their dates, names of original contracting parties, descriptions of lands covered, unpaid balances of principal, dates of filing for record and books and pages of record; and there being specified following said columns the dates and books and pages of the records of the assignments of the respective contracts to your orator; (where references to books of record are by numerals the contracts were recorded and the land situated in Owyhee County, Idaho; where by letters, in Twin Falls County, Idaho):



Contract No.	Name	Description	Unpaid Balance of Principal	Date of Record	Book of Water Con'ts & Page
Oct. 12, '08.	1 Henry C. Jones.....	Lot 2	18-5-11	Nov. 11, '08.	2-1
Oct. 12, '08.	2-a Clyde E. Bott .....	NW <sup>1</sup> / <sub>4</sub>	18-5-11	Nov. 11, '08.	2-2
Oct. 12, '08.	2-b Clyde E. Bott .....	Lot 1	18-5-11	Nov. 11, '08.	2-3
Oct. 12, '08.	2-c Clyde E. Bott .....	SE <sup>1</sup> / <sub>4</sub>	18-5-11	Nov. 11, '08.	2-4
Oct. 12, '08.	3 Elmore C. Rowell .....	Lot 9	7-5-11	Nov. 11, '08.	2-5
Oct. 12, '08.	4-a J. Paul Johnston .....	NW <sup>1</sup> / <sub>4</sub>	18-5-11	Nov. 11, '08.	2-6
Oct. 12, '08.	4-b J. Paul Johnston .....	SW <sup>1</sup> / <sub>4</sub>	18-5-11	Nov. 11, '08.	2-7
Oct. 12, '08.	5 Wm. H. Riemenschneider.....	NW <sup>1</sup> / <sub>4</sub>	24-5-10	Nov. 11, '08.	2-8
Oct. 12, '08.	6-a Walter S. Bennison.....	SE <sup>1</sup> / <sub>4</sub>	24-5-10	Nov. 11, '08.	2-9
Oct. 12, '08.	6-b Walter S. Bennison.....	SW <sup>1</sup> / <sub>4</sub>	24-5-10	Nov. 11, '08.	2-10
Oct. 12, '08.	7-a Alex B. Montgomery.....	NW <sup>1</sup> / <sub>4</sub>	24-5-10	Nov. 11, '08.	2-11
Oct. 12, '08.	7-b Alex B. Montgomery.....	NE <sup>1</sup> / <sub>4</sub>	24-5-10	Nov. 11, '08.	2-12
Oct. 12, '08.	7-c Alex B. Montgomery.....	NW <sup>1</sup> / <sub>4</sub>	24-5-10	Nov. 11, '08.	2-13
Oct. 12, '08.	8 Allen Miller .....	NW <sup>1</sup> / <sub>4</sub>	25-5-10	Dec. 14, '08.	2-186
Oct. 12, '08.	9 Michael O'Gara .....	NE <sup>1</sup> / <sub>4</sub>	25-5-10	Nov. 11, '08.	2-14
Oct. 12, '08.	10 Burton W. Reeves .....	SE <sup>1</sup> / <sub>4</sub>	24-5-10	Nov. 11, '08.	2-15
Oct. 12, '08.	11 Edward T. Barber .....	NE <sup>1</sup> / <sub>4</sub>	26-5-10	Nov. 11, '08.	2-16
Oct. 12, '08.	12 J. Wilson Evans .....	SE <sup>1</sup> / <sub>4</sub>	14-5-10	Nov. 11, '08.	2-17
Oct. 12, '08.	13 James Doughty .....	SW <sup>1</sup> / <sub>4</sub>	28-5-10	Nov. 11, '08.	2-18
Oct. 12, '08.	14 Worth R. Barringer.....	SW <sup>1</sup> / <sub>4</sub>	7-5-11	Nov. 11, '08.	2-19
Oct. 12, '08.	15-a Duncan McDonald .....	SE <sup>1</sup> / <sub>4</sub>	24-5-10	Nov. 11, '08.	2-20

Date	Contract No.	Name	Description	Unpaid Balance of Principal	Date of Record	Book of Water Con'ts & Page
Oct. 12, '08.	15-b	Duncan McDonald	.....SW $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-21
Oct. 12, '08.	15-c	Duncan McDonald	.....SE $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-22
Oct. 12, '08.	15-d	Duncan McDonald	.....NE $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-23
Oct. 12, '08.	16-a	Hannah D. Pike	.....SW $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-24
Oct. 12, '08.	16-b	Hannah D. Pike	.....NW $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-25
Oct. 12, '08.	16-c	Hannah D. Pike	.....NE $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-26
Oct. 12, '08.	17	Harold N. Fletcher	.....NE $\frac{1}{4}$	2080.00	Nov. 14, '08.	2-170
Oct. 12, '08.	18	Homer Harrison	.....Lot 3	2176.00	Nov. 11, '08.	2-27
Oct. 12, '08.	19	Chas. T. Barringer	.....NW $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-28
Oct. 12, '08.	20-a	George F. Stiehl	.....SW $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-29
Oct. 12, '08.	20-b	George F. Stiehl	.....SE $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-30
Oct. 12, '08.	21	Elizabeth Grant	.....NE $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-31
Oct. 12, '08.	22	Leila M. Wells	.....Lot 4	1905.28	Nov. 16, '08.	N-1
Oct. 12, '08.	23	Bennett H. Houston	.....Lot 1	1948.63	Nov. 11, '08.	2-32
Oct. 12, '08.	24	Wilbert E. Hogue	.....SE $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-33
Oct. 12, '08.	25	Frank O. Leonard	.....NW $\frac{1}{4}$	1955.00	Nov. 11, '08.	2-34
Oct. 12, '08.	27	William D. McMillan	.....NE $\frac{1}{4}$	2080.00	Nov. 11, '08.	2-37
Oct. 12, '08.	28	Thomas F. Newton	.....NE $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-38
Oct. 12, '08.	29	Fred E. Paton	.....SE $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-39
Oct. 12, '08.	30	Virginia A. Hanes	.....SE $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-40
Oct. 12, '08.	31	John W. Fink	.....SE $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-41

Oct. 12, '08.	32	John M. Yochem	.....SW <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	23-5-10	2340.00	Nov. 11,	'08.	2-42
Oct. 12, '08.	33	H. L. Jones	.....SE <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	18-5-11	2340.00	Nov. 11,	'08.	2-43
Oct. 12, '08.	34	Edward M. Roberts	.....SE <sup>1</sup> / <sub>4</sub>	NE <sup>1</sup> / <sub>4</sub>	14-6-11	2340.00	Nov. 11,	'08.	2-44
Oct. 12, '08.	35	Charles E. Miller	.....SW <sup>1</sup> / <sub>4</sub>	NW <sup>1</sup> / <sub>4</sub>	24-5-10	2340.00	Nov. 11,	'08.	2-45
Oct. 12, '08.	36	Martha M. Bowman	.....NE <sup>1</sup> / <sub>4</sub>	NW <sup>1</sup> / <sub>4</sub>	30-5-11	2104.41	Nov. 11,	'08.	2-46
Oct. 12, '08.	37-a	Benjamin W. Davis	.....NE <sup>1</sup> / <sub>4</sub>	NW <sup>1</sup> / <sub>4</sub>	18-6-13	2080.00	Nov. 16,	'08.	N-2
Oct. 12, '08.	37-b	Benjamin W. Davis	.....Lot 5		17-6-13	821.60	Nov. 16,	'08.	N-3
Oct. 12, '08.	37-c	Benjamin W. Davis	.....NE <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	18-6-13	1664.00	Nov. 16,	'08.	N-4
Oct. 12, '08.	37-d	Benjamin W. Davis	.....Lot 6		18-6-13	837.20	Nov. 16,	'08.	N-5
Oct. 12, '08.	37-e	Benjamin W. Davis	.....Lot 5		18-6-13	1952.64	Nov. 11,	'08.	N-6
Oct. 12, '08.	38	Arthur W. Bergstrom	.....NW <sup>1</sup> / <sub>4</sub>	NE <sup>1</sup> / <sub>4</sub>	26-5-10	2340.00	Nov. 11,	'08.	2-47
Oct. 12, '08.	39	Herbert T. Wright	.....Lot 4		18-5-11	1915.29	Nov. 11,	'08.	2-48
Oct. 12, '08.	40	Nellie Burgess	.....Lot 6		17-5-11	2250.03	Nov. 11,	'08.	2-49
Oct. 12, '08.	41	Laughlin J. Gillis	.....NW <sup>1</sup> / <sub>4</sub>	NE <sup>1</sup> / <sub>4</sub>	30-5-11	2340.00	Nov. 11,	'08.	2-50
Oct. 12, '08.	42-a	Charles H. Grout	.....SW <sup>1</sup> / <sub>4</sub>	NE <sup>1</sup> / <sub>4</sub>	14-6-11	2080.00	Nov. 11,	'08.	2-51
Oct. 12, '08.	42-b	Charles H. Grout	.....SE <sup>1</sup> / <sub>4</sub>	NW <sup>1</sup> / <sub>4</sub>	14-6-11	2080.00	Nov. 11,	'08.	2-52
Oct. 12, '08.	42-c	Charles H. Grout	.....NE <sup>1</sup> / <sub>4</sub>	SW <sup>1</sup> / <sub>4</sub>	14-6-11	2080.00	Nov. 11,	'08.	2-53
Oct. 12, '08.	43-a	John M. Whitaker	.....SW <sup>1</sup> / <sub>4</sub>	SW <sup>1</sup> / <sub>4</sub>	24-5-10	1820.00	Nov. 11,	'08.	2-54
Oct. 12, '08.	43-b	John M. Whitaker	.....SE <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	23-5-10	2080.00	Nov. 11,	'08.	2-55
Oct. 12, '08.	43-c	John M. Whitaker	.....NE <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	23-5-10	2080.00	Nov. 11,	'08.	2-56
Oct. 12, '08.	43-d	John M. Whitaker	.....NW <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	23-5-10	2080.00	Nov. 11,	'08.	2-57
Oct. 12, '08.	44-a	Louis A. Bradley	.....SE <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	11-6-12	2080.00	Dec. 12,	'08.	N-18
Oct. 12, '08.	44-b	Louis A. Bradley	.....SW <sup>1</sup> / <sub>4</sub>	SW <sup>1</sup> / <sub>4</sub>	12-6-12	1404.00	Dec. 12,	'08.	N-17

Date	Contract No.	Name	Description	Unpaid Balance of Principal	Date of Record	Book of Water Con'ts & Page
Oct. 12, '08.	45	Susanne M. Lovelace.....	Lot 1	2520.76	Nov. 11, '08.	2-58
Oct. 12, '08.	46	Jay F. Buttles .....	NE $\frac{1}{4}$ SW $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-59
Oct. 12, '08.	47	James W. Houston.....	SE $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-60
Oct. 12, '08.	48	C. E. Gulbranson .....	Lot 3	1889.55	Nov. 11, '08.	2-61
Oct. 12, '08.	49-a	James H. Morehouse .....	NW $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-62
Oct. 12, '08.	49-b	James H. Morehouse .....	SW $\frac{1}{4}$	614.25	Nov. 11, '08.	2-63
Oct. 12, '08.	49-c	James H. Morehouse .....	NE $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-64
Oct. 12, '08.	49-d	James H. Morehouse .....	SE $\frac{1}{4}$	1345.50	Nov. 11, '08.	2-65
Oct. 12, '08.	50	John H. Hibbard .....	SW $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-66
Oct. 12, '08.	51-a	Ben D. Cable .....	SW $\frac{1}{4}$	2080.00	Nov. 11, '08.	2-67
Oct. 12, '08.	51-b	Ben D. Cable .....	NW $\frac{1}{4}$	2080.00	Nov. 11, '08.	2-68
Oct. 12, '08.	52	Joel J. Finney .....	NE $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-69
Oct. 12, '08.	53-a	Jas. H. Richards .....	NW $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-70
Oct. 12, '08.	53-b	Jas. H. Richards .....	SW $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-71
Oct. 12, '08.	53-c	Jas. H. Richards .....	NW $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-72
Oct. 12, '08.	53-d	Jas. H. Richards .....	SE $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-73
Oct. 12, '08.	54	Wm. R. McCarty .....	NW $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-74
Oct. 12, '08.	55	James H. Henderson .....	NE $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-75
Oct. 12, '08.	56	Hugo J. Jugel .....	Lot 4	2215.39	Nov. 11, '08.	2-76
Oct. 12, '08.	57-a	Edward B. Thompson .....	SW $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-77
Oct. 12, '08.	57-b	Edward B. Thompson .....	NW $\frac{1}{4}$	2340.00	Nov. 11, '08.	2-78



Oct. 12, '08.	58-a	Curtis F. Pike	NE <sup>1</sup> / <sub>4</sub>	13-6-11	2340.00	Nov. 11, '08.	2-79
Oct. 12, '08.	58-b	Curtis F. Pike	Lot 8	12-6-11	3352.05	Nov. 11, '08.	2-80
Oct. 12, '08.	59	Albert J. Norton	SE <sup>1</sup> / <sub>4</sub>	31-5-11	2340.00	Nov. 11, '08.	2-81
Oct. 12, '08.	60	Junius Henderson	SE <sup>1</sup> / <sub>4</sub>	31-5-11	2340.00	Nov. 11, '08.	2-82
Oct. 12, '08.	61-a	Zebulon Wirt	NW <sup>1</sup> / <sub>4</sub>	17-5-11	2340.00	Nov. 11, '08.	2-83
Oct. 12, '08.	61-b	Zebulon Wirt	SW <sup>1</sup> / <sub>4</sub>	17-5-11	2340.00	Nov. 11, '08.	2-84
Oct. 12, '08.	62-a	Arwid R. Wells	SW <sup>1</sup> / <sub>4</sub>	32-5-11	2080.00	Nov. 11, '08.	2-85
Oct. 12, '08.	62-b	Arwid R. Wells	NW <sup>1</sup> / <sub>4</sub>	32-5-11	2080.00	Nov. 11, '08.	2-86
Oct. 12, '08.	63-a	Chas. L. Joy	NE <sup>1</sup> / <sub>4</sub>	20-6-13	1345.50	Nov. 16, '08.	N-7
Oct. 12, '08.	63-b	Chas. L. Joy	Lot 8	20-6-13	2415.46	Nov. 16, '08.	N-8
Oct. 12, '08.	63-c	Chas. L. Joy	SE <sup>1</sup> / <sub>4</sub>	20-6-13	2340.00	Nov. 16, '08.	N-9
Oct. 12, '08.	63-d	Chas. L. Joy	Lot 4	17-6-13	2797.47	Nov. 16, '08.	N-10
Oct. 12, '08.	64	Frederick W. Peet	SE <sup>1</sup> / <sub>4</sub>	27-5-10	2080.00	Nov. 11, '08.	2-87
Oct. 12, '08.	65	Albert L. Young	NE <sup>1</sup> / <sub>4</sub>	31-5-11	2340.00	Nov. 11, '08.	2-88
Oct. 12, '08.	66	Edward Jensen	Lot 2	5-6-11	2509.06	Nov. 11, '08.	2-89
Oct. 12, '08.	67-a	Iven A. Poteet	SE <sup>1</sup> / <sub>4</sub>	6-6-11	2080.00	Nov. 11, '08.	2-90
Oct. 12, '08.	67-b	Iven A. Poteet	SW <sup>1</sup> / <sub>4</sub>	6-6-11	2080.00	Nov. 11, '08.	2-91
Oct. 12, '08.	67-c	Iven A. Poteet	NE <sup>1</sup> / <sub>4</sub>	6-6-11	2080.00	Nov. 11, '08.	2-92
Oct. 12, '08.	67-d	Iven A. Poteet	SW <sup>1</sup> / <sub>4</sub>	5-6-11	2080.00	Nov. 11, '08.	2-93
Oct. 12, '08.	68	Doran H. Sutphen	Lot 6	12-5-10	2942.55	Nov. 11, '08.	2-94
Oct. 12, '08.	69	Louis G. Freeman	Lot 5	6-6-11	1966.11	Nov. 11, '08.	2-95
Oct. 12, '08.	70-a	Walter F. Morrison	Lot 2	6-6-11	2519.01	Nov. 11, '08.	2-96
Oct. 12, '08.	70-b	Walter F. Morrison	Lot 3	6-6-11	2517.84	Nov. 11, '08.	2-97

Date	Contract No.	Name	Description	Unpaid Balance of Principal	Date of Record	Book of Water Con'st & Page
Oct. 12, '08.	70-c	Walter F. Morrison	Lot 4	2388.55	Nov. 11, '08.	2-98
Oct. 12, '08.	70-d	Walter F. Morrison	SW <sup>1</sup> / <sub>4</sub>	2340.00	Nov. 11, '08.	2-99
Oct. 12, '08.	71-a	Christian D. Steiner	SE <sup>1</sup> / <sub>4</sub>	2080.00	Nov. 11, '08.	2-100
Oct. 12, '08.	71-b	Christian D. Steiner	Lot 2	1930.24	Nov. 11, '08.	2-101
Oct. 12, '08.	71-c	Christian D. Steiner	NE <sup>1</sup> / <sub>4</sub>	2080.00	Nov. 11, '08.	2-102
Oct. 12, '08.	72	Frank C. Jones	NW <sup>1</sup> / <sub>4</sub>	2340.00	Nov. 11, '08.	2-104
Oct. 12, '08.	73	Almedus E. Bissett	SE <sup>1</sup> / <sub>4</sub>	2080.00	Nov. 11, '08.	2-105
Oct. 12, '08.	74	Lawrence Gideon Olson	SW <sup>1</sup> / <sub>4</sub>	2340.00	Dec. 4, '08.	2-180
Oct. 12, '08.	75	Walter J. Coblantz	SE <sup>1</sup> / <sub>4</sub>	2340.00	Nov. 11, '08.	2-106
Oct. 12, '08.	76	Lee A. Reynolds	Lot 6	2260.96	Nov. 11, '08.	2-107
Oct. 12, '08.	77	Joseph J. Whitaker	Lot 1	2228.72	Nov. 11, '08.	2-108
Oct. 12, '08.	78-a	John C. Sanborn	SE <sup>1</sup> / <sub>4</sub>	2340.00	Nov. 11, '08.	2-109
Oct. 12, '08.	78-b	John C. Sanborn	NE <sup>1</sup> / <sub>4</sub>	2340.00	Nov. 11, '08.	2-110
Oct. 12, '08.	79	Henry Hutson	SW <sup>1</sup> / <sub>4</sub>	2340.00	Feb. 16, '09.	2-188
Oct. 12, '08.	80	Andrew R. Hutson	Lot 2	1989.58	Feb. 16, '09.	2-189
Oct. 12, '08.	81	Ennis W. Kinchloe	SW <sup>1</sup> / <sub>4</sub>	2340.00	Nov. 11, '08.	2-112
Oct. 12, '08.	82	Helen S. Hutchinson	Lot 3	2018.25	Nov. 11, '08.	2-113
Oct. 12, '08.	83	Frank E. Catlin	Lot 2	1849.63	Nov. 11, '08.	2-114
Oct. 12, '08.	85	Lucius S. Wells	Lot 7	861.12	Nov. 11, '08.	2-115
Oct. 12, '08.	86	Luther C. Temple	SE <sup>1</sup> / <sub>4</sub>	2080.00	Nov. 11, '08.	2-116
Oct. 12, '08.	87	John E. Lynch	SE <sup>1</sup> / <sub>4</sub>	2080.00	Nov. 11, '08.	2-117

Oct. 12, '08.	88	Clarence H. Forehand.....Lot 7		12-6-11	3363.75	Nov. 11, '08.	2-118
Oct. 12, '08.	89	Mrs. K. Lynch.....NE <sup>1</sup> / <sub>4</sub>		14-6-11	2340.00	Nov. 19, '08.	2-176
Oct. 12, '08.	90	Charles Sundleaf.....SE <sup>1</sup> / <sub>4</sub>		30-5-11	2340.00	Nov. 14, '08.	2-171
Oct. 12, '08.	92	Chas. B. Clapp.....SW <sup>1</sup> / <sub>4</sub>		5-6-11	2080.00	Nov. 11, '08.	2-120
Oct. 12, '08.	93	Wm. H. Paddock.....SE <sup>1</sup> / <sub>4</sub>		19-5-11	2340.00	Nov. 11, '08.	2-121
Oct. 12, '08.	94	Clinton C. Hutchinson.....Lot 6		19-5-11	2034.04	Nov. 11, '08.	2-122
Oct. 12, '08.	95	John D. Bowes.....NW <sup>1</sup> / <sub>4</sub>		14-6-11	2340.00	Nov. 11, '08.	2-123
Oct. 12, '08.	96	Simon C. Parsons.....SE <sup>1</sup> / <sub>4</sub>		32-5-11	2340.00	Nov. 11, '08.	2-124
Oct. 12, '08.	98	John H. Pelletier.....NW <sup>1</sup> / <sub>4</sub>		14-6-11	2340.00	Nov. 11, '08.	2-125
Oct. 12, '08.	99	George L. McCarty.....SE <sup>1</sup> / <sub>2</sub>		31-5-11	2340.00	Nov. 11, '08.	2-126
Oct. 12, '08.	100	Clarence J. Hammett.....Lot 5		12-5-10	1096.16	Nov. 11, '08.	2-127
Oct. 12, '08.	101-a	Chas. W. McCarty.....Lot 3		5-6-11	2513.74	Nov. 11, '08.	2-128
Oct. 12, '08.	101-b	Chas. W. McCarty.....Lot 4		5-6-11	2519.01	Nov. 11, '08.	2-129
Oct. 12, '08.	102-a	Frank Byron Smith.....SW <sup>1</sup> / <sub>4</sub>		33-5-10	2340.00	Nov. 11, '08.	2-130
Oct. 12, '08.	102-b	Frank Byron Smith.....SE <sup>1</sup> / <sub>4</sub>		33-5-10	2340.00	Nov. 11, '08.	2-131
Oct. 12, '08.	103	Oak Hunter.....Lot 1		14-6-11	2126.47	Nov. 11, '08.	2-132
Oct. 12, '08.	104	Albert Smith.....SW <sup>1</sup> / <sub>4</sub>		30-5-11	2288.00	Nov. 11, '08.	2-133
Oct. 12, '08.	105	Reilly Atkinson.....Lot 9		7-6-12	2258.68	Nov. 11, '08.	2-134
Oct. 12, '08.	106	Frank B. Cross.....NE <sup>1</sup> / <sub>4</sub>		23-5-10	2340.00	Nov. 11, '08.	2-135
Oct. 12, '08.	107	Josef Mondre.....Lot 6		12-6-11	3106.35	Feb. 16, '09.	2-190
Oct. 12, '08.	108-a	Robert C. Hudleson.....Lot 7		8-6-12	2416.05	Nov. 11, '08.	2-136
Oct. 12, '08.	108-b	Robert C. Hudleson.....SW <sup>1</sup> / <sub>4</sub>		8-6-12	1842.75	Nov. 11, '08.	2-137
Oct. 12, '08.	109	Geo. R. Barker.....SW <sup>1</sup> / <sub>4</sub>		11-6-12	2340.00	Nov. 16, '08.	N-11

Date	Contract No.	Name	Description	Unpaid Balance of Principal	Date of Record	Book of Water Con'ts & Page
Oct. 12, '08.	110	Edwin Doust	NW <sup>1</sup> / <sub>4</sub>	2340.00	Nov. 11, '08.	2-138
Oct. 12, '08.	111	Moses W. Taylor	NE <sup>1</sup> / <sub>4</sub>	2340.00	Nov. 11, '08.	2-139
Oct. 12, '08.	112-a	Mary Carter Richeson	SW <sup>1</sup> / <sub>4</sub>	2340.00	Nov. 11, '08.	2-140
Oct. 12, '08.	112-b	Mary Carter Richeson	SE <sup>1</sup> / <sub>4</sub>	2340.00	Nov. 11, '08.	2-141
Oct. 13, '08.	113	George McCabe	Lot 7	2489.23	Nov. 11, '08.	2-142
Oct. 13, '08.	114-a	Ignatz Weil	Lot 8	1140.75	Nov. 19, '08.	2-177
Oct. 13, '08.	114-b	Ignatz Weil	Lot 9	1828.12	Nov. 19, '08.	2-178
Oct. 13, '08.	115	S. A. Macanulty	Lot 3	1830.40	Nov. 11, '08.	2-143
Oct. 13, '08.	116	Chas. W. Fuller	NW <sup>1</sup> / <sub>4</sub>	2340.00	Nov. 11, '08.	2-144
Oct. 13, '08.	117	Soiomon W. Seemann	SW <sup>1</sup> / <sub>4</sub>	2340.00	Nov. 11, '08.	2-145
Oct. 13, '08.	118	William Weed Catlin	NE <sup>1</sup> / <sub>4</sub>	2080.00	Nov. 11, '08.	2-146
Oct. 13, '08.	119	Lewis J. Morrison	NE <sup>1</sup> / <sub>4</sub>	2080.00	Nov. 11, '08.	2-147
Oct. 13, '08.	120-a	David H. Bandy	NE <sup>1</sup> / <sub>4</sub>	2340.00	Nov. 11, '08.	2-148
Oct. 13, '08.	120-b	David H. Bandy	SE <sup>1</sup> / <sub>4</sub>	2340.00	Nov. 11, '08.	2-149
Oct. 13, '08.	121	Sophie Silwold	SW <sup>1</sup> / <sub>4</sub>	1820.00	Nov. 11, '08.	2-150
Oct. 13, '08.	122-a	Joseph E. Huber	SW <sup>1</sup> / <sub>4</sub>	2340.00	Dec. 4, '08.	2-181
Oct. 13, '08.	122-b	Joseph E. Huber	Lot 7	1633.32	Dec. 4, '08.	2-182
Oct. 13, '08.	123	Wm. H. McKelvie	Lot 2	1349.44	Nov. 11, '08.	2-151
Oct. 13, '08.	124	Charles Buffington	Lot 5	2003.62	Nov. 11, '08.	2-152
Oct. 13, '08.	125	Alice C. Hutchinson	SW <sup>1</sup> / <sub>4</sub>	2340.00	Nov. 11, '08.	2-153
Oct. 13, '08.	126	Anna J. Ewing	NW <sup>1</sup> / <sub>4</sub>	2080.00	Nov. 11, '08.	2-154



Oct. 13, '08.	127-a	John W. Rielly	..... Lot 1		18-6-12	1274.00	Dec.	4, '08.	2-183
Oct. 13, '08.	127-b	John W. Rielly	..... NE <sup>1</sup> / <sub>4</sub>	NW <sup>1</sup> / <sub>4</sub>	18-6-12	572.00	Dec.	4, '08.	2-184
Oct. 13, '08.	128-a	Orville C. Sanborn	..... SW <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	7-6-12	2340.00	Nov.	11, '08.	2-155
Oct. 13, '08.	128-b	Orville C. Sanborn	..... SE <sup>1</sup> / <sub>4</sub>	SW <sup>1</sup> / <sub>4</sub>	7-6-12	2340.00	Nov.	11, '08.	2-156
Oct. 13, '08.	128-c	Orville C. Sanborn	..... Lot 10		7-6-12	1660.23	Nov.	11, '08.	2-157
Oct. 13, '08.	128-d	Orville C. Sanborn	..... Lot 6		7-6-12	1360.12	Nov.	11, '08.	2-158
Oct. 13, '08.	128-e	Orville C. Sanborn	..... Lot 7		7-6-12	1659.64	Nov.	11, '08.	2-159
Oct. 13, '08.	129	Lorenzo S. Ferris	..... SE <sup>1</sup> / <sub>4</sub>	NE <sup>1</sup> / <sub>4</sub>	18-5-11	2340.00	Nov.	11, '08.	2-160
Oct. 13, '08.	130	Daniel L. Weston	..... Lot 3		32-5-11	2313.67	Nov.	11, '08.	2-161
Oct. 13, '08.	131-a	Carl Palm	..... Lot 2		29-5-11	2920.32	Nov.	14, '08.	2-172
Oct. 13, '08.	131-b	Carl Palm	..... NW <sup>1</sup> / <sub>4</sub>	SW <sup>1</sup> / <sub>4</sub>	29-5-11	2340.00	Nov.	14, '08.	2-173
Oct. 13, '08.	132	Anselm C. Haworth	..... NE <sup>1</sup> / <sub>4</sub>	NW <sup>1</sup> / <sub>4</sub>	32-5-11	2340.00	Nov.	11, '08.	2-162
Oct. 13, '08.	133-a	Lola Ressler	..... Lot 6		29-5-11	1225.30	Nov.	11, '08.	2-163
Oct. 13, '08.	133-b	Lola Ressler	..... Lot 8		29-5-11	1928.74	Nov.	11, '08.	2-164
Oct. 13, '08.	134	John S. Holaday	..... Lot 5		33-5-11	2693.34	Nov.	11, '08.	2-165
Oct. 13, '08.	135	Roland H. Hess	..... NE <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	32-5-11	2340.00	Nov.	11, '08.	2-166
Oct. 13, '08.	136	Wm. H. Holaday	..... SE <sup>1</sup> / <sub>4</sub>	SW <sup>1</sup> / <sub>4</sub>	32-5-11	2080.00	Nov.	11, '08.	2-167
Oct. 13, '08.	137	James P. Holland	..... Lot 6		33-5-11	3184.15	Jan.	15, '09.	2-187
Oct. 13, '08.	138	James M. Holaday	..... NW <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	31-5-11	2340.00	Nov.	11, '08.	2-168
Oct. 13, '08.	139	Thomas W. Topping	..... SW <sup>1</sup> / <sub>4</sub>	SW <sup>1</sup> / <sub>4</sub>	32-5-11	2080.00	Nov.	11, '08.	2-169
Oct. 13, '08.	140	Albert E. Hagler	..... Lot 5		7-6-13	1973.39	Nov.	16, '08.	N-12
Oct. 13, '08.	141	Herman A. Shellenberger	..... Lot 3		9-6-12	2077.92	Dec.	4, '08.	2-185
Oct. 29, '08.	142	Alan P. Senior	..... Lots 6 and 7	28-6-13		2876.99	Dec.	3, '08.	N-15
			Lot 4	21-6-13					

Contract No.	Date	Name	Description	Unpaid Balance of Principal	Date of Record	Book of Water Con'ts & Page
143	Oct. 15, '08.	Wm. A. Gill	Lot 7	2538.90	Nov. 16, '08.	N-13
144	Oct. 17, '08.	Richard E. Thompson	Lot 3	1021.79	Nov. 16, '08.	N-14
145	Oct. 21, '08.	Robert J. Carty	Lot 1	2225.60	Nov. 14, '08.	2-174
146	Oct. 28, '08.	Wm. Manning	Lot 2	1924.65	Nov. 14, '08.	2-175
147	Nov. 2, '08.	Frances C. Sanborn	Lot 7	1053.00	Feb. 15, '09.	N-19
149	Nov. 25, '08.	Jin L. Hammett	NW $\frac{1}{4}$	702.00	Dec. 3, '08.	N-16
150	Oct. 13, '08.	Frederick S. Hodge	Lot 8	981.65	Nov. 19, '08.	2-179
152	Dec. 19, '08.	Wm. L. Condit	Lot 4	2201.35	Feb. 16, '09.	2-191
153	Dec. 31, '08.	Robert L. Michael	Lot 2	1192.23	Feb. 16, '09.	2-192
154	Jan. 15, '09.	J. Gordon Douglass	Lot 8	1040.00	Feb. 15, '09.	N-20
155	Feb. 11, '09.	Eben F. Dudley	Lot 6	2384.72	Mar. 20, '09.	2-193
156-a	Feb. 18, '09.	August Van Holderbeke	Lot 7	3460.27	Mar. 20, '09.	2-194
156-b	Feb. 18, '09.	August Van Holderbeke	NW $\frac{1}{4}$	2340.00	Mar. 20, '09.	2-195
157	Feb. 18, '09.	John H. Pelletier	SE $\frac{1}{4}$	1820.00	Mar. 20, '09.	2-196
158	Mar. 24, '09.	Geo. L. Story	SW $\frac{1}{4}$	1170.00	Apr. 28, '09.	2-197
159	Mar. 24, '09.	U. S. Grant Story	.....			
		.....SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$	SW $\frac{1}{4}$	4212.00	Apr. 28, '09.	2-198
160	Mar. 29, '09.	Anna C. Sexton	Lot 5	2679.30	Apr. 28, '09.	2-199
161	Apr. 1, '09.	Hugh J. Miller	Lot 4	1594.12	Apr. 28, '09.	2-200
162-a	Apr. 3, '09.	Walter T. Wells	Lot 9	1560.00	Apr. 27, '09.	N-24
162-b	Apr. 3, '09.	Walter T. Wells	Lot 6	1040.00	Apr. 27, '09.	N-23

Apr. 2, '09.	163	Thomas Walsh .....	Lot 3	NE $\frac{1}{4}$	14-6-11	2995.20	Apr. 28,	'09.	2-201
Apr. 30, '09.	164	Lloyd E. Williams .....	NW $\frac{1}{4}$		23-5-10	910.00	June 23,	'09.	2-202
Apr. 30, '09.	165	Anna E. Anthony .....	Lot 8		7-5-11	1014.00	June 23,	'09.	2-203
May 22, '09.	166	George W. Evans .....	Lot 8		14-5-10	585.00	June 23,	'09.	2-204
May 24, '09.	167	August Van Holderbeke .....	NE $\frac{1}{4}$	SE $\frac{1}{4}$	5-6-11	1170.00	June 23,	'09.	2-205
June 11, '09.	168-a	Samuel T. Elliot .....	Lot 2		9-6-11	1404.00	June 23,	'09.	2-206
June 11, '09.	168-b	Samuel T. Elliot .....	Lot 3		9-6-11	1278.22	June 23,	'09.	2-207
June 11, '09.	168-c	Samuel T. Elliot .....	Lot 6		9-6-11	2132.32	June 23,	'09.	2-208
June 11, '09.	168-d	Samuel T. Elliot .....	Lot 7		9-6-11	3080.02	June 23,	'09.	2-209
June 14, '09.	169	Edward C. Davis .....	SE $\frac{1}{4}$	SW $\frac{1}{4}$	23-5-10	1144.00	June 23,	'09.	2-210
June 16, '09.	170	Geo. L. Swendsen .....							
		.....NW $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	27-5-10				
		.....	Lot 9		22-5-10	2925.00	June 23,	'09.	2-211
June 18, '09.	171	Earl F. Rounds .....	SE $\frac{1}{4}$	SW $\frac{1}{4}$	11-6-12	1144.00	Sept. 13,	'09.	N-25
Aug. 27, '09.	172	Eugene Brown .....	Lot 4		11-6-12	936.00	Sept. 13,	'09.	N-26
Aug. 27, '09.	173	Eugene Brown .....	Lot 5		11-6-12	1111.50	Sept. 13,	'09.	N-27
Aug. 27, '09.	174	Eugene Brown .....	Lot 8		11-6-12	2691.00	Sept. 13,	'09.	N-29
Aug. 27, '09.	175	Eugene Brown .....	NW $\frac{1}{4}$	SE $\frac{1}{4}$	11-6-12	2340.00	Sept. 13,	'09.	N-28
Aug. 27, '09.	176	Eugene Brown .....	NE $\frac{1}{4}$	SW $\frac{1}{4}$	11-6-12	2340.00	Sept. 13,	'09.	N-30
Aug. 27, '09.	177	Claud G. Brown .....	Lot 6		10-6-12	2180.29	Sept. 13,	'09.	N-31
Aug. 27, '09.	178	Claud G. Brown .....	Lot 7		10-6-12	3146.71	Sept. 13,	'09.	N-32
Aug. 27, '09.	179	Claud G. Brown .....	SW $\frac{1}{4}$	SW $\frac{1}{4}$	11-6-12	1579.50	Sept. 13,	'09.	N-33
Aug. 27, '09.	180	Claud G. Brown .....	SE $\frac{1}{4}$	SE $\frac{1}{4}$	10-6-12	2340.00	Sept. 13,	'09.	N-34

Date	Contract No.	Name	Description	Unpaid Balance of Principal	Date of Record	Book of Water Con'ct & Pags
Aug. 17, '09.	181	Edward R. Northrop	..... Lot 3	4-6-11	Nov. 19, '09.	2-212
Sept. 28, '09.	182	Della Brown	..... Lot 8	10-6-12	Oct. 18, '09.	N-35
Sept. 28, '09.	183	Della Brown	..... NE $\frac{1}{4}$	SW $\frac{1}{4}$	Oct. 18, '09.	N-36
Sept. 28, '09.	184	Della Brown	..... SE $\frac{1}{4}$	SW $\frac{1}{4}$	Oct. 18, '09.	N-38
Sept. 28, '09.	185	Della Brown	..... SW $\frac{1}{4}$	SE $\frac{1}{4}$	Oct. 18, '09.	N-37
Nov. 29, '09.	187	John T. Norton	..... NE $\frac{1}{4}$	NE $\frac{1}{4}$	Jan. 8, '10.	2-213
Dec. 1, '09.	188	Frances C. Sanborn	..... Lot 4	11-6-11	Jan. 29, '10.	2-214
Dec. 1, '09.	189	Frances C. Sanborn	..... Lot 5	11-6-11	Jan. 29, '10.	2-215



The assignment to your orator of the above named contracts, numbered 1 to 21 inclusive, 23 to 36 inclusive (there being no contract assigned numbered 26), 38 to 43rd inclusive, 45 to 62B inclusive, 64 to 78B inclusive, 81 to 106 inclusive (there being no contracts assigned Nos. 84, 91 or 97), 108A, 108B, 110 to 136 inclusive, 138, 139, 141, 145, 146 and 150, was executed under date of December 15, 1908, and filed for record December 26, 1908, in the Recorder's Office of Owyhee County, Idaho, and was by him recorded in Book 5 of Assignments, Page 266.

The assignment to your orator of the above named contracts, numbered 22, 37A, 37B, 37C, 37D, 37E, 63A, 63B, 63C, 63D, 109, 140, 142, 143 and 144, was executed under date of December 15, 1908, and filed for record December 26, 1908, in the Recorder's Office of Twin Falls County, Idaho, and was by him recorded in Book . . . . of Assignments, page . . . . .

The assignment to your orator of the above named contracts, numbered 79, 80, 107, 137, 152, 153, 155, 156A, 156B and 157, was executed under date of April 8, 1909, and filed for record April 10, 1909, in the Recorder's Office of Owyhee County, Idaho, and was by him recorded in Book 5 of Assignments, page 309.

The assignment to your orator of the above named contracts, numbered 44A, 44B, 149, 147 and 154, was executed under date of April 8, 1909, and filed for record April 9, 1909, in the Recorder's Of-

fice of Twin Falls County, Idaho, and was by him recorded in Book 1 of Assignments, page 21.

The assignment to your orator of the above named contracts, numbered 158, 159, 160, 161 and 163, was executed under date of May 6, 1909, and filed for record May 8, 1909, in the Recorder's Office of Owyhee County, Idaho, and was by him recorded in Book 5 of Assignments, page 317.

The assignment to your orator of the above named contracts, numbered 164 to 170 inclusive, was executed under date of June 26, 1909, and filed for record June 29, 1909, in the Recorder's Office of Owyhee County, Idaho, and was by him recorded in Book 5 of Assignments, page 335.

The assignment to your orator of the above named contracts, numbered 162A, 162B and 171 to 180 inclusive, was executed under date of September 25, 1909, and filed for record September 28, 1909, in the Recorder's Office of Twin Falls County, Idaho, and was by him recorded in Book 1 of Assignments, page 72.

The assignment to your orator of the above named contracts, numbered 182 to 185 inclusive, was executed under date of November 6, 1909, and filed for record November 8, 1909, in the Recorder's Office of Twin Falls County, Idaho, and was by him recorded in Book 1 of Assignments, page 86.

The assignment to your orator of the above named contracts, numbered 181, 187, 188 and 189,

was executed under date of February 26, 1910, and filed for record March 1, 1910, in the Recorder's Office of Owyhee County, Idaho, and was by him recorded in Book 5 of Assignments, page 379.

24. That as your orator is informed and believes, the Glenns Ferry Canal Company, Limited, a corporation organized under the laws of the State of Idaho; Pacific Coast Pipe Company, a corporation organized under the laws of the State of Washington; Kings Hill Extension Company, Limited, a corporation organized under the laws of the State of Idaho; Minneapolis Steel and Machinery Company, a corporation, and C. R. Shaw, have, or claim to have, some interest, the exact nature of which is unknown to your orator, in the property hereinbefore described in this Bill, or in some part or parts thereof, which interest or interests, if any, however, your orator avers and charges are each subject and subordinate to the lien of the aforesaid Deed of Trust or Indenture of Mortgage to your orator, and of the indebtedness secured to be paid thereby.

25. That the said defendant, Kings Hill Irrigation & Power Company, has, as your orator is informed and believes, made default on said Deed of Trust or Indenture of Mortgage, as amended, and said bonds in the following, among other particulars, to-wit:

(a) In that it has failed and neglected to keep the aggregate amount of the face value of the payments (exclusive of interest) to become due upon

contracts deposited with your orator up to the percentage in excess of the aggregate par value of the bonds outstanding thereunder, named in said Deed of Trust or Indenture of Mortgage, to-wit: up to One Hundred Fifty Per Cent (150%) of the aggregate of the principal sums of such outstanding bonds; and that the aggregate amount, exclusive of interest, of the face value of such contracts now on deposit with your orator is less than One Hundred Fifty Per Cent (150%) of the aggregate of face value of bonds outstanding, and, furthermore, that a considerable number of said contracts so on deposit with your orator are now in default and payments are overdue thereon:

(b) In failing to pay the principal sums of bonds aggregating \$40,000.00 par value which matured and became due May 1, 1911;

(c) In failing to pay the principal sums of bonds aggregating \$40,000.00 par value which matured and became due May 1, 1912;

(d) In failing to pay the interest coupons attached to each and all of the 463 bonds aforesaid (excepting only the bonds which became due May 1, 1911, as aforesaid), which coupons matured and became due on November 1, 1911, and on May 1, 1912.

26. That on account of the defaults aforesaid the holders of more than a majority in amount of the bonds secured by said Deed of Trust or Indenture of Mortgage and now outstanding, did on the 14th day of December, A. D. 1912, file with your orator



a written request that your orator should declare the principal of all the bonds secured by said Deed of Trust or Indenture of Mortgage (which were then outstanding and were not already due by their terms) due and payable immediately, and that thereupon your orator did, by notice in writing delivered to said defendant, Kings Hill Irrigation & Power Company, prior to the institution of this suit, and on or about the 24th day of December, 1912, declare the principal of all of said bonds due and payable; and that thereupon on said 24th day of December, A. D. 1912, the principal of all of said bonds, to-wit: bonds of principal sums aggregating \$358,400, became due and payable, and that the said defendant is now in default as to the payment thereof.

26-a. That from time to time payments have been made to your orator on various of the water contracts deposited as aforesaid with, and assigned to your orator under the terms of said Trust Deed, as amended, and from time to time your orator has made payments therefrom in accordance with the provisions of said Trust Deed, as amended, and there is now in the hands of your orator the sum of Two Thousand Four Hundred Four Dollars and Seventy-eight Cents (\$2404.78) as the net proceeds of said payments on which sum your orator asserts it has a lien under said Trust Deed, as amended, for its charges, disbursements and obligations, incurred in connection with this trust, paramount to each and every other obligation secured by said Trust Deed as amended.

27. That for the purpose of this proceeding your orator has found it necessary to employ counsel to conduct the same, and your orator has itself performed valuable services in connection with its said trust, and has expended large sums of money, and under and by virtue of the terms of said Trust Deed, your orator is entitled to a fair and reasonable compensation for its services, and it is entitled to a fair and reasonable compensation for its counsel employed by your orator.

28. That there is now due and owing, and will become due and owing, on account of the 463 bonds secured by the said Trust Deeds, the following amounts:

Principal of bonds.....	\$358,400.00
-------------------------	--------------

Interest coupons due November 1, 1911.	9,552.00
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Interest on the amount of said coupons  
from November 1, 1911, to the date of  
decree herein, at the rate of 7% per  
annum.

Interest coupons due May 1, 1912.....	9,552.00
---------------------------------------	----------

Interest upon the amount of said coupons  
from May 1, 1912, to the date of the de-  
cree herein, at the rate of 7% per an-  
num.

Interest from May 1, 1911, to May 1, 1912, upon the principal of the \$40,000 in bonds which matured May 1, 1911, at the rate of 7% per annum.....	2,800.00
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Interest at 7% per annum upon the aggregate of the principal sums of the bonds outstanding, to-wit: upon \$358,400.00, from May 1, 1912, to the date of the decree herein.

And that there is due under said Trust Deed the compensation for the services of your orator and the compensation for the services of the counsel of your orator.

And that your orator is also entitled under the terms of said Deed of Trust or Indenture of Mortgage to the payment of all the costs and expenses of every kind of this proceeding, and of all the expenses, liabilities and advances made or incurred by your orator in keeping, maintaining, operating or completing the construction of the property hereinbefore referred to, and in discharging its trusts, and also of the sums heretofore and hereafter paid by your orator for taxes, assessments or other liens prior to the lien of said Deed of Trust or Indenture of Mortgage.

29. That the business of said defendant, Kings Hill Irrigation & Power Company, and the use which is made by it of the property conveyed by said Indenture of Mortgage, as amended, consists chiefly in the operation, directly and through stock ownership, of a certain irrigation system situated in the Counties of Lincoln, Owyhee and Twin Falls, in the State of Idaho, and the supplying of water to numerous persons, residents in said Counties, and that

because of the peculiar nature and character of the said property and the manner in which the operation thereof has been and is now being conducted, said property can be sold to better advantage, and should be sold, in one parcel and as an entirety or whole, and as a going system; and further that the sale thereof should be made without redemption, for the reason, as your orator is advised and believes, that the redemption laws of the State of Idaho do not cover or apply to or affect plants and property of the kind and character conveyed by said Deed of Trust or Indenture of Mortgage as amended.

30. That the property conveyed by, and upon which, said Deed of Trust or Indenture of Mortgage, as amended, constitutes a lien, affords scant, meager and inadequate security for the amount due upon the indebtedness secured to be paid by said Deed of Trust or Indenture of Mortgage, as amended, and if the operation of the business of the defendant, Kings Hill Irrigation & Power Company, should be suspended during the pendency of this suit, it would greatly injure the value of said property, both for the purpose of sale and otherwise, and cause irreparable injury to your orator and the owners of the indebtedness aforesaid secured by said Deed of Trust or Indenture of Mortgage, as amended; that the earnings and income of the said defendant have, at all times, been and still are sufficient to pay its operating expenses, and that said defendant is utterly unable to provide for the operation of said business during the pendency of this suit, and that said prop-



erties and plant should be preserved and operated by a Receiver appointed herein under the supervision and direction of this Court, for protecting the same and preserving its value.

FORASMUCH, THEREFORE, as your orator is without remedy in the premises, except in a court of equity, and to the end that the said defendants, Kings Hill Irrigation & Power Company, Glenns Ferry Canal Company, Limited, Pacific Coast Pipe Company, Kings Hill Extension Irrigation Company, Limited, Minneapolis Steel and Machinery Company and C. R. Shaw, may be required to answer this Bill of Complaint according to the rules and practice of this Honorable Court, but not under oath (answer under oath being hereby expressly waived) ; that during the pendency of this proceeding a Receiver may be appointed for all the property, real, personal, mixed and choses in action, conveyed by and upon which the said Indenture of Mortgage, as amended, constitutes a lien, with full power and authority to said Receiver to take possession and immediate control of all of said property, and operate the same as fully to all intents and purposes as the said defendant might or could so and has heretofore done; that an account may be taken in this behalf by or under the direction of this Court of the whole of the indebtedness, principal and interest, due and owing upon the aforesaid bonds and the said Deed of Trust or Indenture of Mortgage, as amended, including all costs and expenses of every kind and character of this proceeding and the sale held hereunder, and a rea-

sonable compensation to your orator, its agents, attorneys, solicitors and counsels for services in connection herewith, and all other proper charges for costs, charges and disbursements made or incurred in managing and operating the property aforesaid, and also the payment of all sums heretofore or hereafter advanced by your orator for taxes and assessments, and the payment of liens prior to the lien of said Deed of Trust or Indenture of Mortgage, as amended, or of interest upon or principal of obligations secured by such liens, with interest on each of said advancements; that the defendant, Kings Hill Irrigation & Power Company, may be decreed to pay whatever sum or sums shall appear to be due upon the taking of the amount aforesaid, by a short day to be fixed by the Court; that in default of such payment by said defendant, the said mortgaged property and premises may be sold in one parcel and as an entirety or whole, and as a going system, and without redemption, to satisfy the amount so found to be due; and that, in case of such sale, the said defendant, and all persons claiming by, through or under it, may be forever barred and foreclosed of and from all equity of redemption and all claims of, in and to said mortgaged premises or property, and every part thereof, and the purchaser thereof be let into immediate possession of the premises and property so sold; that out of the proceeds of such sale and moneys that may hereafter come into the hands of the Receiver appointed by this Court, or into the hands of your orator, there may be first paid

all costs and expenses of every kind and character of such proceedings and sale, and a reasonable compensation to your orator, its agents and attorneys, solicitors and counsel, for services in connection therewith and herewith, and all the proper charges of your orator for its services, costs, charges and disbursements made or incurred in managing and operating the property aforesaid; and that then there may be repaid all sums of money heretofore or hereafter advanced by your orator or by any holder or holders of said bonds, or any of them, for taxes, assessments or the payment of liens prior to the lien of said Deed of Trust or Indenture of Mortgage, as amended, or of interest upon or principal of obligations secured by such liens, with interest on each of said advancements, and that there may then be paid the amount due upon said bonds secured by said Indenture of Mortgage, both as principal and interest, and if there be a surplus that the same may be held subject to the further order or orders of this Court; and that upon any sale under the order or decree of this Court, the purchaser or purchasers may, after providing for all expenses, costs and compensation as aforesaid, be allowed to make settlement for, and payment of, the balance of the price bid for said property at such sale, and to deliver to the Master or other person conducting the said sale, the bonds secured by said Deed of Trust or Indenture of Mortgage, as amended, and have the same applied toward the payment of the balance of the purchase money, computing such bonds at a sum equal to but

not exceeding that which should be payable out of the net proceeds of such sale, if made for cash, to the holders of said bonds, for the principal and interest thereof, and that in case the proceeds of such sale shall not be sufficient to satisfy and discharge all the matters aforesaid, a judgment or decree may be entered against the defendant, Kings Hill Irrigation & Power Company, for any deficiency that may be due or owing from it after the application of the proceeds of sale as hereinbefore prayed, and that your orator may have such other and further relief in the premises as the nature of the case may require, and as shall be proper and agreeable to the principles of equity and to this Court;

MAY IT PLEASE YOUR HONOR to grant unto your orator the writ of SUBPOENA directed to the Marshal of said District, commanding him that he summon the defendants, Kings Hill Irrigation & Power Company, Glenns Ferry Canal Company, Limited, Pacific Coast Pipe Company, Kings Hill Extension Irrigation Company, Limited, Minneapolis Steel and Machinery Company, and C. R. Shaw, to be and appear in this court on a certain day therein named, and under a certain penalty therein to be limited and stated, and then and there to make full, true and direct answer to this bill of complaint (but not under oath, such answer under oath being expressly waived as to each of said defendants), and to show cause, if any they have, why the prayer of this bill of complaint should not be granted according to the rules and practices of this Honorable



Court, and to stand ready to perform and abide by such order, direction or decree as may be made against them in the premises, and as to this Honorable Court shall seem meet.

And may it please the Court to appoint a Receiver of the properties aforesaid, with the usual powers as hereinbefore prayed.

And your orator will ever pray, etc.

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK,

As Trustee.

(Seal)

By John Jay Abbott,  
Its Vice President.

Attest: Frank H. Jones, Secretary.

MAYER, MEYER, AUSTRIAN & PLATT,  
RICHARDS & HAGA,

Solicitors and of Counsel, for Continental and Commercial Trust and Savings Bank, as Trustee.

Mayer, Meyer, Austrian & Platt, Chicago, Illinois.  
Richards & Haga, Boise, Idaho, of counsel.

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United States of America,  
State of Illinois,  
County of Cook,—ss.

Frank H. Jones, being first duly sworn, on oath says he is the Secretary of the Continental and Commercial Trust and Savings Bank, complainant in the foregoing bill of complaint; that he has read over the foregoing bill of complaint, and knows its allega-

tions, and that the same are true in substance and in fact, as he verily believes.

FRANK H. JONES,  
Secretary.

Subscribed and sworn to before me this 11th day of December, 1912.

(Seal) E. F. MUELLER,  
Notary Public in and for Cook County, Illinois. My commission expires April 16, 1914.

(Endorsed): Filed Dec. 28, 1912. A. L. Richardson, Clerk.

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United States of America,  
District of Idaho,  
Southern Division,—ss.

*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee,  
Complainant,

vs.

KINGS HILL IRRIGATION & POWER COMPANY, a Corporation, GLENN'S FERRY CANAL COMPANY, LIMITED, a Corporation, PACIFIC COAST PIPE COMPANY, a Corporation, KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED, a Corporation, MINNEAPOLIS STEEL AND MACHINERY COMPANY, a Corporation, and C. R. SHAW,  
Defendants.

*In Equity.*

SEPARATE ANSWER OF DEFENDANT, PACIFIC COAST PIPE COMPANY, A CORPORATION.

COMES NOW the Pacific Coast Pipe Company, a corporation, and for answer to the bill of complaint herein :

I.

Admits the truth of the allegations contained in Paragraphs 1 to 3, inclusive, of the complaint.

II.

This defendant is without knowledge, save by the allegations of the complaint, as to the truth of the averments contained in Paragraphs 4 to 23, inclusive, of said complaint.

III.

Answering the averments of Paragraph 24 of said complaint, this defendant denies that its interest in the property described in the complaint is subject and subordinate, or subject or subordinate, to the lien of the Deed of Trust or Indenture of Mortgage set out in the complaint or of the indebtedness secured or sought to be secured or paid thereby.

IV.

Defendant is without knowledge, save by the allegations of the complaint, as to the truth of the averments contained in Paragraphs 25 to 30, both inclusive, of said complaint.

WHEREFORE, this defendant prays to be hence dismissed with its costs.

N. M. RUICK,  
Solicitor for Defendant, Pacific Coast Pipe Company.

Receipt of a copy of the foregoing answer admitted this 22nd day of March, 1913.

MAYER, MEYER, AUSTRIAN & PLATT,  
RICHARDS & HAGA,  
Attorneys for Continental & Commercial Trust & Savings Bank.

(Endorsed) : Filed March 25, 1913. A. L. Richardson, Clerk.

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*In the District Court of the United States, in and for  
the District of Idaho, Southern Division.*

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee,  
Complainant,

vs.

KINGS HILL IRRIGATION & POWER COMPANY, a Corporation, GLENN'S FERRY CANAL COMPANY, LIMITED, a Corporation, PACIFIC COAST PIPE COMPANY, a Corporation, KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED, a Corporation, MINNEAPOLIS STEEL AND MACHINERY COMPANY, a Corporation, and C. R. SHAW,  
Defendants.



THE STATE OF IDAHO, on the relation of John M. Haines, Governor; Joseph Peterson, Attorney General; Wilfred L. Gifford, Secretary of State; Grace M. Shepherd, Superintendent of Public Instruction, and Fred Huston, State Auditor, constituting the State Board of Land Commissioners of the State of Idaho,

Intervener.

CRASTER FARM & ORCHARD COMPANY,

Intervener.

### AMENDED ANSWER.

Comes now the defendant, the Minneapolis Steel and Machinery Company, and in answer to the bill of complaint of the Continental and Commercial Trust and Savings Bank, as Trustee, complainant above named, admits, denies and alleges as follows:

#### I.

As to the truth of the allegations made by the complainant in paragraphs one and two of its bill, this defendant is without knowledge.

#### II.

This defendant admits the facts set out in paragraph three of plaintiff's bill.

#### III.

As to the truth of the allegations made in paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of plaintiff's bill, this defendant is without knowledge.

## IV.

In answer to the allegations contained in paragraph 24 of complainant's bill, this defendant admits that it has and claims to have an interest in certain property belonging to the Kings Hill Irrigation and Power Company, and alleges the fact to be that the Kings Hill Irrigation and Power Company, a corporation, the defendant above named, and the Elmore Development Company, a corporation, are jointly indebted to this defendant, the Minneapolis Steel and Machinery Company, a corporation, in the sum of Ten Thousand Two Hundred and Forty-six and 3-100 (\$10,246.03) Dollars, together with interest thereon at the rate of seven per cent per annum, since March 1st, 1910, for the construction of a certain steel bridge, across the Snake River, at or near the town or village of King Hill, Elmore County, Idaho, the said bridge abutting the bank of the Snake River in Elmore County, Idaho, at a point in Section 12, Lot 1, Township 5 South, Range 10 East, Boise Meridian, near said village of King Hill, and abutting the southerly bank of Snake River in Owyhee County, Idaho, at a point directly south of the aforesaid abutment in Elmore County, and defendant is informed and believes, and hence on information and belief alleges, that the land on which said bridge abuts the southern bank of Snake River in Owyhee County is owned by the defendant, the Kings Hill Irrigation & Power Company, and this defendant alleges that the said bridge is the prop-

erty of the said Elmore Development Company, and the said Kings Hill Irrigation & Power Company;

That on the 28th day of February, A. D. 1912, at 25 minutes past 10 o'clock a. m., this defendant filed its claim of lien for the said sum of Ten Thousand Two Hundred and Forty-six and 3-100 (\$10,246.03) Dollars, and interest as aforesaid, in the office of the County Recorder of Elmore County, Idaho, copy of which said claim of lien is attached hereto as Exhibit "A," hereby referred to and made a part hereof; that prior to the 18th day of July, 1912, and prior to the institution of this action, this defendant, as plaintiff, instituted an action in the District Court of the Fourth Judicial District of the State of Idaho, in and for Elmore County, against the Kings Hill Irrigation and Power Company and the Elmore Development Company, as defendants, demanding judgment against the said defendants, and each of them, for the sum of Ten Thousand Two Hundred Forty-six and 3-100 (\$10,246.03) Dollars, with interest thereon as aforesaid, and for One Thousand (\$1000.00) Dollars attorneys' fees, and costs of said action, and for the foreclosure of the said lien hereinbefore described, which said action is now pending in said court;

Denies that the said property in and to which it claims a lien, as aforesaid, is the same property, or any part of the property, described in complainant's bill, and alleges the fact to be that the said property embraced in said lien is not the same property, nor any part of the property, described in the Trust Deed,

attached to complainant's bill as Exhibit "A," nor is the property the same property, nor any part of the property described or referred to, or to be acquired or construed under the contract made and entered into by the State Board of Land Commissioners of the State of Idaho and the Glenns Ferry Land and Irrigation Company on the 6th day of May, 1904, nor the contract between the State of Idaho and the Kings Hill Irrigation and Power Company, made and entered into on the 22nd day of January, 1908, nor is the said property described in said lien any part of the system or works to be constructed under any of the said contracts with the State of Idaho, as hereinbefore set forth, nor is said property described in said lien a part of the Kings Hill Irrigation and Power Company's irrigation system for watering lands in Owyhee, Lincoln and Twin Falls Counties, State of Idaho, nor a part of the said Kings Hill Irrigation and Power Company's system on the south side of Snake River; nor is said property a part of said Kings Hill Irrigation and Power Company's irrigation system in any other manner nor at all.

WHEREFORE, the defendant, the Minneapolis Steel and Machinery Company, a corporation, prays that the prayer of complainant's bill, insofar as it affects the property hereinbefore described as embraced in the lien of this defendant, hereinbefore set forth, be denied and that the court grant to complainant no relief in this action which will in any manner involve the said property described in defendant's said lien, as hereinbefore set forth, and for



such further relief as to this court may seem meet and equitable, and the defendant will ever pray.

MINNEAPOLIS STEEL AND MACHINERY  
COMPANY, a Corporation.

By Dean Driscoll, Attorney and Agent.

FREMONT WOOD, and  
DEAN DRISCOLL,

Residing at Boise, Idaho, Solicitors and of Counsel  
for the Minneapolis Steel and Machinery Com-  
pany, a Corporation.

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Exhibit "A."

MINNEAPOLIS STEEL AND MACHINERY  
COMPANY, a Corporation,

vs.

KINGS HILL IRRIGATION AND POWER COM-  
PANY, a Corporation, and THE ELMORE DE-  
VELOPMENT COMPANY, a Corporation.

*Claim of Lien.*

NOTICE IS HEREBY GIVEN, That the under-  
signed, MINNEAPOLIS STEEL AND MACHIN-  
ERY COMPANY, a corporation organized and ex-  
isting under the laws of the State of Minnesota, hav-  
ing its principal office at Minneapolis, in the said  
State of Minnesota, as an original contractor, files  
this, its notice of lien, claiming a lien under the pro-  
visions of Chapter I, Title IV, Part III, Section 5110  
to 5124, inclusive, Idaho Revised Codes, of, in and  
to that certain bridge heretofore constructed across  
Snake River in Elmore County, Idaho, at or near the

town or village of King Hill in said Elmore County, together with the approaches thereto and sufficient ground on either side of the approaches thereof for the convenient use and operation of said bridge; and to that end notice is hereby given that the undersigned, Minneapolis Steel and Machinery Company, is the name of the person or corporation who entered into a contract in writing, on or about the fifteenth day of September, A. D. 1909, with the Kings Hill Irrigation and Power Company, a corporation organized under the laws of the State of Nevada, and the Elmore Development Company, a corporation, organized under the laws of the State of Idaho, for furnishing and erecting, complete, ready for travel, a 353-foot steel highway bridge to be built over the Snake River at King Hill, Idaho; including all steel work, plank floor, railing, wheel grades, tubular piers, concrete cribs and rock fill for same, and ten feet of earth approach on each end of the bridge, all to be erected complete in place ready for travel; said bridge to be constructed in accordance with plans and specifications prepared by the Minneapolis Steel and Machinery Company and approved by the engineer of the said Kings Hill Irrigation and Power Company and the said Elmore Development Company, with a guaranty that said bridge "will sustain the loads specified in the specifications, as well as a 20-inch wood stave pipe filled with water," for which said structure complete, the said Kings Hill Irrigation and Power Company and the said Elmore Development Company agreed to pay the sum of Ten

Thousand and Five Hundred (\$10,500.00) Dollars, as follows, to-wit: Five Thousand Two Hundred and Fifty (\$5,250.00) Dollars thirty days after the arrival of all the material at the bridge site, and the balance of the contract price, to-wit: Five Thousand Two Hundred and Fifty (\$5,250.00) Dollars within sixty days after completion of the contract, or any deficiencies therein.

That the said contract, and the deficiencies therein, was performed in full in every respect on the 30th day of December, 1911.

That no part of said contract price has been paid and there is now due and owing thereon from the said Kings Hill Irrigation and Power Company and the said Elmore Development Company the sum of Ten Thousand Two Hundred and Forty-six and 3-100 (\$10,246.03) Dollars, together with interest thereon at the rate of seven (7%) per cent per annum since March 1st, 1910; and that said amount last mentioned is due and owing to this claimant for work and material done and supplied to and for the construction and completion of the said steel bridge, its foundations, supports and approaches, after deducting all just credits and offsets.

The name of the claimant is the Minneapolis Steel and Machinery Company and the names of the parties for whom said work was performed and materials furnished are Kings Hill Irrigation and Power Company and the Elmore Development Company, and the date when the last item of labor was performed and labor furnished in the construc-

tion of said bridge and completion thereof was December 30, 1911, and the following is a description of the property to be charged with this lien, to-wit:

The 353-foot steel bridge over the Snake River at King Hill, Elmore County, Idaho, together with the necessary approaches thereto and the necessary foundations and supports thereof, and the names of the owners, or reputed owners of the property charged with this lien at the time of the making of this statement are the Kings Hill Irrigation and Power Company and the Elmore Development Company, as aforesaid.

Dated February 13th, 1912.

MINNEAPOLIS STEEL AND MACHINERY  
COMPANY,

By M. H. Hanauer.

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State of Utah,  
County of Salt Lake,—ss.

M. H. Hanauer of Salt Lake City, State of Utah, being first duly sworn, deposes and says, that he is the agent of the Minneapolis Steel and Machinery Company, claimant in the foregoing claim of lien; that he has knowledge of the facts stated in said claim of lien and that he believes the claim therein set forth to be just.

M. H. HANAUER.

Subscribed and sworn to before me this 13th day of February, 1913.

(Seal)

F. E. BARNUM,  
Notary Public.



(Endorsed as follows) :

Claim of Lien.

MINNEAPOLIS STEEL AND MACHINERY COMPANY, a corporation, vs. KINGS HILL IRRIGATION AND POWER COMPANY, a corporation, and the ELMORE DEVELOPMENT COMPANY, a corporation.

14481

State of Idaho,

County of Elmore,—ss.

I hereby certify that this instrument was filed for record at the request of Fremont Wood at 25 minutes past 10 o'clock and duly recorded in Book 18 of Liens, at page 448.

F. C. SMITH,

Ex Officio Recorder.

By P. H. Smith, Deputy.

Fees \$2.00.

Service of the within and foregoing answer by receipt of copy thereof is hereby acknowledged, this first day of October, 1913.

N. M. RUICK.

Attorney for Pacific Coast Pipe Co.

J. H. PETERSON,

BENJAMIN S. CROW,

Attorneys for State of Idaho and Priest et al.,  
Intervenors.

MAYER, MEYER, AUSTRIAN & PLATT,

RICHARDS & HAGA,

Attorneys for Complainants.

(Endorsed) : Filed Oct. 1, 1913. A. L. Richardson, Clerk.

United States of America,  
State of Idaho,—ss.

*In the District Court of the United States, in and for  
the District of Idaho, Southern Division.*

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee,  
Complainant,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation, GLENNS FERRY  
CANAL COMPANY, LIMITED, a Corporation,  
PACIFIC COAST PIPE COMPANY, a Corpora-  
tion, KINGS HILL EXTENSION IRRIGATION  
COMPANY, LIMITED, a Corporation, MINNE-  
APOLIS STEEL AND MACHINERY COM-  
PANY, a Corporation, and C. R. Shaw,  
Defendants.

*In Equity.*

PACIFIC COAST PIPE COMPANY, a Corporation,  
Plaintiff,

vs.

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee, GLENNS  
FERRY CANAL COMPANY, LIMITED, a Cor-  
poration, KINGS HILL EXTENSION IRRIGA-  
TION COMPANY, LIMITED, a Corporation,  
MINNEAPOLIS STEEL AND MACHINERY  
COMPANY, a Corporation, STATE OF IDAHO,  
on the relation of JOHN M. HAINES, Governor,  
JOSEPH H. PETERSON, Attorney General,

WILFRED L. GIFFORD, Secretary of State,  
GRACE M. SHEPHERD, Superintendent of  
Public Instruction, and FRED HUSTON, State  
Auditor, constituting the STATE BOARD OF  
LAND COMMISSIONERS OF THE STATE OF  
IDAHO, Intervenor, CRASTER FLAT FARM  
AND ORCHARD COMPANY, a Corporation, In-  
tervenor, and C. R. SHAW,

Defendants.

*Cross Bill.*

TO THE HONORABLE JUDGE OF THE  
UNITED STATES DISTRICT COURT, DIS-  
TRICT OF IDAHO:

The Pacific Coast Pipe Company, a corporation organized and existing under the laws of the State of Washington and a citizen and resident of the State of Washington, brings this its cross bill of complaint against the Continental and Commercial Trust and Savings Bank, a corporation organized and existing under the laws of the State of Illinois and a citizen and resident of the State of Illinois, as Trustee, Glenns Ferry Canal Company, Limited, a corporation organized and existing under the laws of the State of Idaho, and a citizen and resident of the State of Idaho, Kings Hill Extension Irrigation Company, Limited, a corporation organized and existing under the laws of the State of Idaho and a resident of the State of Idaho, Minneapolis Steel and Machinery Company, a corporation organized under the laws of the State of Minnesota and a citizen and

resident of the State of Minnesota, the State of Idaho, on the relation of John M. Haines, Governor, Joseph H. Peterson, Attorney General, Wilfred L. Gifford, Secretary of State, Grace M. Shepherd, Superintendent of Public Instruction, Fred Huston, State Auditor of said State, constituting the State Board of Land Commissioners of the State of Idaho, Intervenor, Craster Flat Farm and Orchard Company, a corporation organized and existing under the laws of the State of Idaho, and a citizen and resident of the State of Idaho, and C. R. Shaw, a citizen and resident of the State of Idaho, and this cross bill respectfully shows unto your Honor:

That, on or about the . . . . day of January, 1913, the defendant, Continental and Commercial Trust and Savings Bank, as Trustee, filed its bill of complaint in this court upon the equity side thereof against the Kings Hill Irrigation and Power Company, which then was and now is a corporation organized and existing under the laws of the State of Nevada, and this cross complainant and others, and in and by said bill of complaint alleged, among other things, as follows:

That the name of said complainant, for many years prior to August 1, 1910, was the American Trust and Savings Bank and that, on or about the date mentioned, its name was changed to Continental and Commercial Trust and Savings Bank; that it is duly authorized by law to accept and execute trusts and to act as trustee of mortgages and deeds



of trust in the nature of mortgages; that it is the same corporation which, on November 2, 1908, was named and designated in a mortgage or deed of trust in said bill of complaint described as the "American Trust and Savings Bank"; that the defendant, Kings Hill Irrigation & Power Company, in said bill of complaint named, is a corporation organized under the laws of the State of Nevada and a citizen and resident of said State, transacting business in the State of Idaho.

That, on or about November 2, 1908, the said Kings Hill Irrigation & Power Company executed and delivered to said complainant a Deed of Trust or Indenture of Mortgage as and in the form of "Exhibit A" attached to said bill of complaint, which said Deed of Trust was duly executed and acknowledged by said Kings Hill Irrigation & Power Company and recorded in the several counties in which the property affected thereby was situated; that, on or about March 1, 1909, the said Kings Hill Irrigation & Power Company and said complainant executed a Deed of Trust or Indenture of Mortgage amending such former deed of trust and mortgage in the form contained in "Exhibit B" attached to said bill of complaint, which said amendatory deed or trust or mortgage was thereafter duly recorded.

That, by said deed of trust or mortgage, the said Kings Hill Irrigation & Power Company, as security for the payment of indebtedness thereafter in said bill of complaint referred to, granted, bargained, sold and conveyed to said complainant certain property,

in said bill of complaint described, including rents, issues, interests, incomes and profits from the same, the real property of which was and is situated in the counties of Lincoln, Owyhee and Twin Falls in said state; that said deed of trust or mortgage and the amendments thereto, was for the purpose of securing the payment of an issue of bonds of said Kings Hill Irrigation and Power Company then about to be issued, consisting of six hundred fifty-five (655) coupon bonds of the aggregate face value of Five Hundred Thousand (\$500,000.00) Dollars, which bonds were to be and become due and payable at the office of said complainant, in the City of Chicago, on certain dates and in certain amounts specified in said bill of complaint; that to each of said bonds was attached coupons evidencing the interest to accrue thereon; that of said bonds, four hundred sixty-three (463) in number, representing a face value of Three Hundred Fifty-eight Thousand Four Hundred (\$358,400.00) Dollars, were executed by said Kings Hill Irrigation & Power Company and subsequently certified by said complainant, as trustee, and thereafter issued, delivered and negotiated, the due dates and the amounts of said bonds so negotiated being set out in said bill of complaint; that no suit or action at law had been commenced to recover the principal of said bonds or the interest thereon, or any part thereof.

That, in and by said deed of trust or mortgage, the said Kings Hill Irrigation & Power Company covenanted and agreed to pay to the holder of each and

every of said bonds the principal and interest accruing thereon when due and that the face value of the sums to become due on contracts for the sale of water rights and mortgages to secure the payment thereof, which it should, from time to time, assign to said complainant, for the purpose of securing the payment of principal and interest on said bonds, should, at all times, be kept equal to one hundred fifty (150%) per cent of the face value of said bonds then outstanding, except so far as funds should be in the hands of said complainant applicable to the payment of the same; that, in case the said Kings Hill Irrigation & Power Company should make default in the payment of said bonds or interest, or should fail to keep all the covenants of said trust deed or mortgage and the amendments thereof, the said complainant should be entitled to proceed in the manner prescribed in said trust deed or mortgage for the enforcement of the conditions thereof, and might, under conditions therein named, take possession of said property for the purpose of preserving the same and for securing the payment of the principal and interest of said bonds or to take appropriate judicial proceedings by action, suit or otherwise, as should be deemed by said complainant most expedient in the interest of the holders of the bonds thereby secured, and, upon obtaining a decree for the foreclosure of said trust deed or mortgage, to make sale of said property, without the benefit of valuation and appraisal laws and the right to redeem said property from sale.

And said complainant, by said bill of complaint, further alleged that, subsequent to the execution of the said deed of trust or mortgage, there were deposited with and assigned to it by said Kings Hill Irrigation & Power Company certain contracts entered into by said last named company for the purchase of water rights and shares in its irrigation system, there being deposited at the same time fully paid shares of the capital stock of the Glenns Ferry Canal Company, Limited, a corporation, duly assigned in blank; that said contracts are still in the hands of said complainant and a description or purported description thereof, with dates, names of original contracting parties, description of lands covered, unpaid balance of principal, dates of filing for record and books and pages of record are set out in said bill of complaint.

Complainant, in said bill of complaint, further avers that the defendants named in said bill of complaint, including this cross complaint, have, or claim to have, some interest, the exact nature of which, as is alleged in said bill of complaint, is unknown to said complainant, in the property in said bill of complaint described, or in some part or parts thereof, and that said interest or interests, if any, are subject and subordinate to the lien of the said deed of trust or mortgage and of the indebtedness to be paid thereby.

Said complainant, by said bill of complaint, further avers that said Kings Hill Irrigation & Power Company has made default on said deed of trust or



mortgage as amended and said bonds in certain particulars which are set out in said complaint and are, in substance and effect, that the said Kings Hill Irrigation & Power Company has failed and neglected to keep the aggregate amount of the face value of the payments to become due upon contracts deposited with said complainant up to the one hundred fifty (150%) per cent provided by said trust deed and mortgage, in failing to pay the principal sum of bonds aggregating Forty Thousand (\$40,000.00) Dollars par value which matured May 1, 1911, and failing to pay the principal sum of bonds aggregating Forty Thousand (\$40,000.00) Dollars par value which matured May 1, 1912; also in failing to pay the interest coupons on sundry of said bonds which matured May 1, 1911, and May 1, 1912.

That, in said bill of complaint, it is further alleged that, on account of the defaults of the said Kings Hill Irrigation & Power Company, the holders of more than a majority in amount of the said bonds filed with said complainant a request that it declare the principal of all the bonds secured by said deed of trust or mortgage immediately due and payable and that thereupon the said complainant, by notice in writing delivered to said Kings Hill Irrigation & Power Company prior to the institution of said suit, declared the principal of all of said bonds due and payable and that thereupon said bonds, aggregating Three Hundred Fifty-eight Thousand Four Hundred (\$358,400.00) Dollars, became due and payable and that said Kings Hill Irrigation & Power

Company is in default as to the payment thereof; that, from time to time, payments have been made to said complainant on various water contracts assigned to and deposited with it under the terms of said trust deed and mortgage and that there was, at the time of the filing of said bill of complaint, in the hands of said complainant the sum of Two Thousand Four Hundred Four and Seventy-eight Hundredths (\$2404.78) Dollars, as net proceeds of such payments, on which sum, said complainant asserted and asserts, it has a lien under trust deed and mortgage for its charges, disbursements and obligations incurred in connection with said trust and that such lien is paramount to each and every obligation secured by said trust deed as amended; that said complainant found it necessary to employ counsel and has itself performed services in connection with said trust and has expended large sums of money and is, under the terms of said trust deed, entitled to reasonable compensation for its services and for counsel employed by it.

And said complainant, by said bill of complaint, alleges that there was, at the time of the filing of said bill of complaint, due and owing, and thereafter to become due and owing, on account of said bonds, the sum of Three Hundred Fifty-eight Thousand Four Hundred (\$358,400.00) Dollars, principal, and Twenty-one Thousand Nine Hundred Four (\$21,904.00) Dollars, interest, together with interest at the rate of seven (7%) per cent upon the principal of the bonds, Three Hundred Fifty-eight Thou-

sand Four Hundred Dollars (\$358,400.00), from May 1, 1912, to the date of the decree to be entered therein; that there is also due compensation for the services of said complainant and its counsel and that complainant is entitled, under the terms of said trust deed or mortgage, to the payment of all costs and expenses of every kind incurred, and to be incurred in said proceeding, and in keeping, maintaining, operating or completing the construction of the property referred to therein and in discharging its trusts; also such sums as said complainant should pay for taxes, assessments or other liens prior to the lien of said trust deed or mortgage.

Said complainant, by said bill of complaint, further alleged that the business of said Kings Hill Irrigation & Power Company consisted in the operation of an irrigation system and the supplying of water to numerous persons; that, because of the peculiar nature of said property and the manner of its operation, the same could be sold to better advantage in one parcel and that the sale should be made without redemption; that said property affords insufficient security for said indebtedness and, if the operation of said irrigation system should be suspended during the pendency of said suit, the value of the property would depreciate and irreparable injury would be done to the owners of the indebtedness secured by said trust deed; that the earnings and income of said Kings Hill Irrigation & Power Company have never been sufficient to pay its operating expenses and that it was and would be unable

to provide for the conduct of its said business during the pendency of said suit and that said property should be preserved and said system operated by a Receiver, under the direction of the Court.

That, in and by said bill, it is prayed that a Receiver be appointed, who, during the pendency of said suit, should have full power and authority to take possession and control of said property and operate the same as the Kings Hill Irrigation & Power Company might or could have done; that an account be taken of the indebtedness of said Kings Hill Irrigation & Power Company to the said complainant which should include all costs and expenses of said suit and compensation to said complainant, its agents, attorneys, solicitors and counsel, and all charges and disbursements made and incurred in managing and operating said property and to reimburse said complainant for monies advanced to pay taxes and assessments and liens prior to the lien of said trust deed and interest on all such payments and advances; that said Kings Hill Irrigation & Power Company be decreed to pay such sum as shall be ascertained to be due and, in default of such payment, that said mortgaged property be sold as one parcel and without redemption and that, in the event of such sale, the said Kings Hill Irrigation & Power Company and all persons claiming by, through or under them, might be forever barred and foreclosed of all equity or redemption and all claim in and to said mortgaged premises and that the purchaser thereof be let into immediate possession.



That, out of the proceeds of such sale, there should be first paid all costs and expenses, reasonable compensation to said complainant, its agents, attorneys, solicitors and counsel, all proper charges to said complainant for services, costs, charges and disbursements, made or incurred in managing and operating said property; and to the reimbursement of said complainant for monies theretofore advanced for any and all purposes and that then there might be paid the amount due upon the bonds secured by said mortgage and, if there was any surplus, it might be held subject to the further order of the Court; that, upon any sale under said decree, the purchasers might, after providing for all expenses, costs and compensation, be allowed to make payment of the balance of the purchase price in the bonds secured by said trustee; that, in case the proceeds of such sale be not sufficient to satisfy and discharge all of said matters, a judgment be entered against the said Kings Hill Irrigation & Power Company for the deficiency; and that said complainant might have such other and further relief as should be proper and agreeable to the court; all of which will more fully appear by said bill of complaint on file in said cause, to which and to the allegations thereof, this cross complainant begs leave to refer and to make the same a part of this, its cross bill with like effect as if the allegations of said bill of complaint had been set forth fully and at length herein.

The cross complainant further says that, having waived the service of process in said suit, it now

appears and files its answer to said bill and at the same time files this, its cross complaint.

That the cross complainant, Pacific Coast Pipe Company, during all the times hereinafter mentioned, was and now is a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Seattle, in said State.

That the defendant, Kings Hill Irrigation & Power Company, at all times hereinafter mentioned, was and now is a corporation organized and existing under the laws of the State of Nevada and authorized to do business and doing business in the State of Idaho.

That the said Kings Hill Irrigation & Power Company now is and during the times hereinafter mentioned was the owner of that certain ditch, flume and canal commonly known as the "Kings Hill Canal" and the right of way therefor located in Lincoln, Twin Falls, Owyhee and Elmore Counties, State of Idaho, together with all appurtenances thereunto belonging or in anywise appurtenant and including all main and subordinate laterals, dams, headgates, rights of way, water rights, etc., which said canal is more particularly described as follows, to-wit:

The intake of said canal is at a point on the right bank of the Malad River in Lincoln County, State of Idaho, near the North and South line between the NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  and the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 35, Township 6 South of Range 13 East,

Boise base and meridian; said point being approximately South 75 degrees 22 minutes, East 1,195.5 feet from the Southwest corner of Section 27, said Township and Range. From the said point of diversion the canal continues along the right bank of said river for a distance of about 5,600 feet to Snake River; thence across Snake River on a steel span bridge in an inverted syphon wooden pipe 1,400 feet to the South side of Snake River; thence running in a Westerly direction along the South side of Snake River for a distance of about twenty miles to a point near the center of Section 5, Township 6 South of Range 11 East, B. M., which is the end of the main canal, from which point the distribution system, consisting of main laterals known as the Poison Basin Branch, King Hill Syphon, King Hill Branch, Kings Hill Bench Branch and Glenns Ferry Branch, together with subordinate laterals, extends on, over and across lands in Townships 5 and 6 South, Ranges 10 and 11 East, Boise meridian.

That said property is the same, or a part of the same, property described in the original bill of complaint in this action on which the complainant therein, Continental & Commercial Trust and Savings Bank, as Trustee, seeks to foreclose a trust deed or mortgage given to secure the payment of certain bonds claimed to have been executed and delivered by said defendant, Kings Hill Irrigation & Power Company.

That, between the 13th day of July, 1909, and the 2nd day of July, 1910, this cross complainant, at the

instance and request of said Kings Hill Irrigation & Power Company, and as an original contractor, furnished, sold and delivered to said Kings Hill Irrigation & Power Company, at Ballard Station, Seattle, State of Washington, certain materials to be used and which were actually used in the construction and repair of the said ditch, flume and canal hereinbefore described at the agreed price and of the reasonable value of Twelve Thousand Three Hundred Sixty-three and Twenty-four Hundredths (\$12,363.24) Dollars, upon the following terms, to-wit: Payment to be made in cash and, if not paid, interest to be charged after thirty (30) days from the date of invoice.

That a statement of said materials so furnished, together with the dates upon which the same were furnished, being the dates of invoice, respectively, is as follows, to-wit:

1909.

July 13, to merchandise.....	\$ 152.48
July 17, to merchandise.....	17.40
August 12, to merchandise.....	5,092.50
October 23, to merchandise.....	419.57
October 23, to merchandise.....	2,176.82

1910.

February 25, to merchandise.....	654.50
February 26, to merchandise.....	725.41
February 28, to merchandise.....	902.48
February 28, to merchandise.....	982.83
March 8, to merchandist.....	169.20



May 18, to merchandise.....	6.31
July 2, to merchandise.....	744.53
July 2, to merchandise.....	319.21
	<hr/>
	\$12,363.24

That no part of said amount has been paid save and except the sum of Two Thousand Two Hundred Ninety-one and Ninety-one Hundredths (\$2291.91) Dollars as follows, to-wit:

## 1909.

August 14, cr. by freight.....	\$ 328.83
August 14, cr. by freight.....	292.45
August 14, cr. by freight.....	306.05
August 20, cr. by freight.....	132.46
September 10, cr. by cash.....	169.88
December 20, cr. by freight.....	259.10

## 1910.

March 5, cr. by freight.....	198.00
March 28, cr. by freight.....	209.14
March 28, cr. by freight.....	198.00
March 28, cr. by freight.....	198.00
	<hr/>
	\$2291.91

That there became due and owing to this cross complainant from said Kings Hill Irrigation & Power Company on account of materials so furnished, sold and delivered as aforesaid, the sum of Ten Thousand Seventy-one and Thirty-three Hundredths (\$10,071.33) Dollars, together with interest to date of payment at the lawful rate of seven (7%) per cent per annum upon each and every of the sev-

eral items for merchandise furnished, as per statement contained in the preceding paragraph of this cross complaint, from and after thirty (30) days from the date of said several items less interest on the several credits hereinbefore in this paragraph set forth.

That cross complainant ceased to furnish materials for said ditch, flume and canal, as aforesaid, on the 2nd day of July, 1910, and within ninety (90) days after it had ceased to furnish materials therefor, as aforesaid, and for the purpose of perfecting a lien on said ditch, flume and canal for the moneys so due on account of materials furnished, as aforesaid, cross complainant, within the time allowed by the laws of the State of Idaho, filed for record in the offices of the County Recorders of Elmore and Owyhee Counties, State of Idaho, its claim of lien duly verified, which said claim was duly recorded on the records of said Elmore County on August 4, 1910, in Book 18 of Liens, at Page 401, and on the records of said Owyhee County on August 5, 1910, in Book 3 of Leases and Liens, at Page 260; that a copy of said claim of lien is hereto attached, marked "Exhibit A" and made a part of this cross complaint.

That cross complainant paid for the filing and recording of said claim of lien the sum of Four and Twenty Hundredths (\$4.20) Dollars; that the sum of Seven Hundred Fifty (\$750.00) Dollars was and is a reasonable fee to be allowed to this cross complainant, plaintiff in said action referred to, for the

prosecution of the same and the foreclosure of said lien, as provided by the law of the State of Idaho.

This cross complainant further avers that, thereafter, to-wit, on the 31st day of October, 1910, and within the time allowed by the laws of the State of Idaho, it commenced an action and proceeding in the District Court of the Fourth Judicial District of the State of Idaho, in and for Elmore County, being a proper court in which to institute such proceeding, to enforce its said lien and summons was duly issued in said action and served on the said Kings Hill Irrigation & Power Company, which thereupon, appeared in said action and procured said cause to be removed into the United States Circuit Court for the District of Idaho, Southern Division; that said Kings Hill Irrigation & Power Company filed its answer in said cause and such proceedings were thereafter had therein in said United States Circuit Court that a decree of said court was duly entered in said cause on the 30th day of December, 1911, by which decree, it was ordered, adjudged and decreed that there was then due and owing to this cross complainant, plaintiff in said action, by the defendant therein, Kings Hill Irrigation & Power Company, a defendant named in this action, the sum of Ten Thousand Sventy-one and Thirty-three Hundredths (\$10,071.33) Dollars, together with accrued interest thereon at the rate of seven (7%) per cent per annum from October 2nd, 1910, to date of said decree, said interest amounting to Eight Hundred Forty-five and Ninety-nine Hundredths (\$845.99)

Dollars, together with the further sum of Four and Twenty Hundredths (\$4.20) Dollars for filing and recording said claim of lien, and the further sum of Seven Hundred Fifty (\$750.00) Dollars, attorney's fees upon the foreclosure of said lien, making a total of Eleven Thousand Six Hundred Seventy-one and Fifty-two Hundredths (\$11,671.52) Dollars, and that said Pacific Coast Pipe Company, plaintiff in said action and cross complainant herein, have and recover of the said Kings Hill Irrigation & Power Company the said sum of Eleven Thousand Six Hundred Seventy-one and Fifty-two Hundredths (\$11,671.52) Dollars, with interest until paid, and the costs of said cause, and that execution issue therefor.

It was further, by said decree, ordered, adjudged and decreed that the said sum of Eleven Thousand Six Hundred Seventy-one and Fifty-two Hundredths (\$11,671.52) Dollars, with accruing interest, constituted a lien upon the ditch, flume, canal and right of way thereinbefore described in the complaint in said action, together with all appurtenances and including all main and subordinate laterals, dams, headgates, rights of way, water rights, etc., which said property, referred to, set out and described in said decree, is the same as is hereinbefore in this cross complaint described and is the same, or part of the same, property referred to and described in the original bill of complaint in this action of the Continental & Commercial Trust and Savings Bank.



It was further, by said decree, ordered, adjudged and decreed that, if said sum of money, with accruing interest and costs, be not paid by said Kings Hill Irrigation & Power Company within ninety (90) days from the entry of said decree, then R. M. McCracken, Special Master appointed by the court for that purpose, should sell the property therein described to satisfy said lien to the highest bidder for cash at public auction at the door of the Court House of Owyhee County, State of Idaho, in the town of Silver City, in said Owyhee County, State of Idaho, being the county in which the greater part of said property was and is located.

That said sum of money so adjudged by said decree to be due and owing to the plaintiff therein, Pacific Coast Pipe Company, this cross complainant, was not, nor was any part or portion thereof, paid by the said Kings Hill Irrigation & Power Company, nor by any one in its behalf, within ninety (90) days from the entry of said decree, nor at any time, nor at all. Whereupon, such proceedings were taken and had that the said hereinbefore described property was thereafter, on the 28th day of May, 1912, at said Silver City, in Owyhee County, State of Idaho, by said Special Master, pursuant to the order and direction contained in said decree and after due notice of such sale, offered for sale to the highest bidder and sold to this cross complainant, plaintiff in said action, for the sum of Twelve Thousand One Hundred Ninety-two and Sixty Hundredths (\$12,192.60) Dollars, being the full amount named in said judg-

ment and decree, with accrued interest and costs, including Master's fees, disbursements and commissions on such sale; that said decree further provided, ordered and decreed that the plaintiff might become a purchaser at such sale and that said Special Master, after the time allowed by law for redemption, should execute a deed to the purchaser or purchasers of said premises on said sale.

That, thereupon, said Special Master made his report of said sale and such proceedings were thereupon had that the said sale was, on July 9, 1912, by an order of said court, duly confirmed.

That, heretofore, to-wit, on May 1, 1908, the said Kings Hill Irrigation & Power Company entered into a contract in writing with the State of Idaho, whereby the said company undertook and agreed with said State to construct an irrigation system or works for the purpose of irrigating and reclaiming certain arid public lands of the United States situated in the counties of Twin Falls, Owyhee and Elmore, in said State of Idaho, under the provisions of Section 4 of an act of Congress, approved August 18, 1894, commonly known as the Carey Act, and the acts amendatory thereof, and the laws enacted by the State of Idaho in pursuance of the power granted by said acts of Congress. That a copy of said contract between the said Kings Hill Irrigation & Power Company and the State of Idaho is of the pleadings, records and files in this action and is attached to the complaint in intervention of the State of Idaho here-

tofore filed herein, as Exhibit 3, and this cross complainant refers to said contract, Exhibit 3, so on file in this action as an exhibit attached to said complaint in intervention, and begs leave to make reference thereto as a part of this cross complaint, as fully as if the same were set out at length herein.

That the works so to be constructed, and which were constructed, by said Kings Hill Irrigation & Power Company consisted of a dam or dams, main and subordinate canals, main and subordinate laterals, fluming, trestle works, pipe lines, bridges for supporting pipe lines, headgates, waste gates and other structures, as described in said contract with the State of Idaho, Exhibit 3, hereinbefore referred to, and the said works were to be constructed and completed and turned over in accordance with the specifications, terms, provisions and conditions of the said contract referred to.

That the materials so sold and delivered by this cross complainant to said Kings Hill Irrigation and Power Company, as hereinbefore in this cross complaint set out, were to be used, and were actually used, in the construction and completion of the canals and works required to be constructed, and which were constructed, under the terms of said contract for the irrigation and reclamation of the lands referred to and described therein.

That said irrigation works so to be constructed, and which were constructed, by the said Kings Hill Irrigation & Power Company under said contract

with the State of Idaho, were constructed over, along, across and upon the public lands of the United States and lands of the State of Idaho, and the completion of said canals and other structures, comprising the main canal and distribution system of the works so to be constructed, was essential and necessary to the securing to said Kings Hill Irrigation & Power Company of a right of way therefor over said public lands of the United States, and essential and necessary to the securing to said Kings Hill Irrigation & Power Company of a right, title or interest in and to such right of way; and this cross complainant avers that said Kings Hill Irrigation and Power Company had and acquired no right, title or interest whatsoever in and to said right of way prior to the furnishing by this cross complainant of the materials hereinbefore in this cross complaint referred to and their actual use in the construction and completion of the canals and works referred to, being the canals, structures and irrigation works hereinbefore set out and described in this cross complaint and in the original bill of complaint herein of the Continental & Commercial Trust & Savings Bank, as Trustee.

Wherefore, this cross complainant says that its lien for the materials so furnished to be used, and which were actually used, in the said irrigation works and system, canals, pipe lines and other structures, as hereinbefore in this cross complaint set out, was and is prior and superior to the lien of the trust deed



and mortgage set out in said original bill of complaint in this action.

This cross complainant avers that, in addition to the claim of lien by trust deed or mortgage asserted by said Continental & Commercial Trust & Savings Bank, as Trustee, set out in the original bill of complaint in this action, and which lien, this cross complainant avers is subsequent to, and subject to, the lien of this cross complainant, the following named defendants have, or claim to have, some right, title and interest in and to the irrigation works and property hereinbefore in this cross complaint described, to-wit:

Glenns Ferry Canal Company, Limited a corporation, Kings Hill Extension Irrigation Company, Limited, a corporation, Minneapolis Steel and Machinery Company, a corporation, State of Idaho, on the relation of John M. Haines, Governor, Joseph H. Peterson, Attorney General, Wilfred L. Gifford, Secretary of State, Grace M. Shepherd, Superintendent of Public Instruction, and Fred Huston, State Auditor, constituting the State Board of Land Commissioners of the State of Idaho, Craster Flat Farm and Orchard Company, and C. R. Shaw;

and cross complainant says that such right, title and interest, if any, is subsequent to and subordinate to the prior and superior right, title, interest and lien of this cross complainant, as hereinbefore in this cross complaint set out.

Wherefore, this cross complainant prays that said defendants, and each of them, may be required to

set forth the nature and extent of their several claims and that a decree be entered in this cause in favor of the plaintiff, adjudging and decreeing as follows:

1. That the said Kings Hill Irrigation & Power Company was and is indebted to this cross complainant for materials used and which were used in the canals and structures, hereinbefore in this cross complaint referred to, in the sum of Ten Thousand Seventy-one and Thirty-three Hundredths (\$10,071.33) Dollars, together with interest to date of payment at the lawful rate of seven (7%) per cent per annum on each and every of the several items for merchandise furnished, as hereinbefore in this cross complaint alleged, from and after thirty (30) days from the date of said several items, less interest on the several credits hereinbefore set out, including Four and Twenty Hundredths (\$4.20) Dollars, cost of filing and recording said lien, and Seven Hundred Fifty (\$750.00) Dollars, attorney's fee for the prosecution of the suit to foreclose said lien.

2. That it may be decreed that the said lien of this cross complainant was and is a valid and subsisting lien against the said irrigation works and canal system of said Kings Hill Irrigation & Power Company, together with the dams, ditches, canals, laterals, rights of way and all the property and appurtenances connected therewith for the amount of said lien, together with costs, disbursements and attorney's fees; that said lien was and is prior and superior to any right, title, claim or interest had, held,

claimed or owned by the said Continental & Commercial Trust & Savings Bank, as Trustee, and the other several defendants, and each of them, and that the right, title and interest of said defendants, and each of them, including said Continental & Commercial Trust & Savings Bank, as Trustee, is subsequent to, and subordinate to, the right, title, claim, interest and lien of this cross complainant, as hereinbefore set out; and for a decree foreclosing said lien of cross complainant as against the said defendants, and each of them.

3. That cross complainant may have such other and further relief in the premises as the circumstances in the case may require and as may be agreeable to equity.

Cross complainant prays for a rule in the said cause requiring all of the said defendants in this cross complaint named, and each of them, to answer said cross complaint by a day to be fixed by the court and that a subpoena be issued out of this court commanding said defendants, and each of them, on a day certain, therein to be named, personally to appear before this court and make answer to this cross complaint and to abide by such order and decree herein as may be made against them.

PACIFIC COAST PIPE COMPANY.

By T. B. Garrison, its President.

N. M. Ruick, Solicitor for Cross Complainant, Pacific Coast Pipe Company.

State of Washington,  
County of King,—ss.

T. B. Garrison, being duly sworn, says he is President of the Pacific Coast Pipe Company, the cross complainant in the foregoing cross complaint named and its duly authorized agent in this behalf; that he has read the foregoing cross complaint and knows the contents thereof and that he believes the facts therein stated to be true.

T. B. GARRISON.

Subscribed and sworn to before me this 19th day of March, 1913.

EDGAR L. CRIDER,  
(Seal) Notary Public, King County, Washington.

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*Exhibit A.*

CLAIM OF LIEN.

PACIFIC COAST PIPE COMPANY,

Claimant,

VS.

KINGS HILL IRRIGATION & POWER COMPANY,

Defendant.

Notice is hereby given that the Pacific Coast Pipe Company, a corporation organized and existing under the laws of the State of Washington with its principal place of business at Seattle in said state, hereby claims a lien upon that certain ditch, flume and canal commonly known as the "Kings Hill



Canal" and the right of way therefor located in Lincoln, Twin Falls, Owyhee and Elmore Counties, State of Idaho, together with all appurtenances thereunto belonging or in anywise appurtenanting and including all main and subordinate laterals, dams, headgates, rights of way, water rights, etc. Said canal is owned and reputed to be owned by the Kings Hill Irrigation and Power Company, a corporation organized and existing under the laws of the State of Nevada and doing business in the State of Idaho, which said canal is more particularly described as follows, to-wit:

The intake of said canal is at a point on the right bank of the Malad River in Lincoln County, State of Idaho, near the North and South line between the NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  and the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 35, Township 6 South of Range 13 East, Boise base and meridian; said point being approximately South 75 degrees 22 minutes, East 1,195.5 feet from the Southeast corner of Section 27, said Township and Range. From the said point of diversion the canal continues along the right bank of said river for a distance of about 5,600 feet to Snake River; thence across Snake River on a steel span bridge in an inverted syphon wooden pipe 1,400 feet to the South side of Snake River; thence running in a Westerly direction along the South side of Snake River for a distance of about twenty miles to a point near the center of Section 5, Township 6 South of Range 11 East, B. M., which is the end of the main canal, from which point, the distribution system, con-

sisting of main laterals known as the Poison Basin Branch, King Hill Syphon, King Hill Branch, King Hill Bench Branch and Glenns Ferry Branch, together with subordinate laterals, extends on, over and across lands in Townships 5 and 6 South, Ranges 10 and 11 East, Boise meridian.

This claim of lien is for the sum of Ten Thousand Seventy-one and Thirty-three Hundredths (\$10,071.33) Dollars, together with interest to date of payment at the lawful rate of seven (7%) per cent per annum upon each and every of the several items for merchandise furnished as per statement hereto annexed, marked Schedule 1 and made a part hereof, from and after thirty (30) days from the date of said several items, less interest on the several credits appearing on said statement, on account of materials furnished by the claimant to, and at the instance of, the Kings Hill Irrigation & Power Company, the owner and reputed owner of said ditch, flume and canal, to be used in the construction and repair of the said ditch, flume and canal. Said materials were furnished to the said Kings Hill Irrigation and Power Company between the 13th day of July, 1909, and the 2nd day of July, 1910, on which said last named date, the claimant ceased to furnish materials for said ditch, flume and canal.

That claimant was and is an original contractor in the furnishing of said materials and ninety (90) days have not elapsed since it ceased to furnish materials for the construction and repair of said ditch, flume and canal.

That there remains a balance due claimant for said materials so furnished between said dates, after deducting all just credits and offsets, the above named sum, with interest as above.

Wherefore, said claimant claims a lien upon said ditch, flume and canal in the sum of Ten Thousand Seventy-one and Thirty-three Hundredths (\$10,071.33) Dollars, together with interest as above, which interest accrued to the 1st day of August, 1910, amounted to \$434.16, making the total claim on August 1st, 1910, \$10,505.49.

PACIFIC COAST PIPE COMPANY,

By N. M. Ruick, Agent and Attorney, residence,  
Boise, Idaho, Attorney for Claimant.

*Schedule 1.*

STATEMENT.

KINGS HILL IRRIGATION & POWER COMPANY to PACIFIC COAST PIPE CO., DR.

Terms cash. Interest will be charged after 30 days from date of invoice at 8 per cent per annum.

1909.

July 13, to merchandise.....	\$ 152.48
July 17, to merchandise.....	17.40
August 12, to merchandise.....	5,092.50
October 23, to merchandise.....	419.57
October 23, to merchandise.....	2,176.82

1910.

February 25, to merchandise.....	654.50
February 26, to merchandise.....	725.41

February 28, to merchandise.....	902.48
February 28, to merchandise.....	982.83
March 8, to merchandise.....	169.20
May 18, to merchandise.....	6.31
July 2, to merchandise.....	744.53
July 2, to merchandise.....	319.21
	<hr/>
	\$12,363.24

## 1909.

Aug. 14, cr. by freight.....\$	328.83
Aug. 14, cr. by freight.....	292.45
Aug. 14, cr. by freight.....	306.05
Aug. 20, cr. by freight.....	132.46
Sept. 10, cr. by cash.....	169.88
Dec. 20, cr. by freight.....	259.10

## 1910.

Mch. 5, cr. by freight.....	198.00	
Mch. 28, cr. by freight.....	209.14	
Mch. 28, cr. by freight.....	198.00	
Mch. 28, cr. by freight.....	198.00	2,291.91
	<hr/>	<hr/>
		\$10,071.33

State of Idaho,  
County of Ada, —ss.

N. M. Ruick, being first duly sworn, on oath says that he is agent and attorney for the Pacific Coast Pipe Company, the claimant named in the foregoing claim of lien; that he has read the same and knows the contents thereof and believes the same to be just.

N. M. RUICK.



Subscribed and sworn to before me this 2nd day of August, 1910.

B. W. OPPENHEIM,

(Seal) Notary Public, Ada County, Idaho.

(Endorsed): Filed March 25, 1913. A. L. Richardson, Clerk.

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*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee,

Plaintiff,

vs.

KINGS HILL IRRIGATION & POWER COMPANY, a Corporation, GLENNS FERRY CANAL COMPANY, LIMITED, a Corporation, PACIFIC COAST PIPE COMPANY, a Corporation, KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED, a Corporation, MINNEAPOLIS STEEL & MACHINERY COMPANY, a Corporation, and C. R. SHAW,

Defendants,

AND

THE STATE OF IDAHO, on the relation of John M. Haines, Governor, Joseph Peterson, Attorney General, Wilfred L. Gifford, Secretary of State, Grace M. Shepherd, Superintendent of Public Instruction, and Fred Huston, State Auditor, constituting the State Board of Land Commissioners of the State of Idaho, F. E. WILSON et al., and CRASTER FARM AND ORCHARD COMPANY,

Intervenors.

## SUPPLEMENTAL CROSS COMPLAINT.

Comes now the complainant and by leave of the court first had and obtained files this its supplemental cross complaint and alleges therein as follows:

That, subsequent to the order of this court confirming the said sale by a Special Master, as referred to in the original cross complaint herein, the time allowed by law for the redemption of said property from sale having expired, the said Special Master, on the 5th day of September, 1913, executed, acknowledged and delivered as such Special Master to this cross complainant a deed to the premises in said original cross complaint described, with the appurtenances, and the same ever since have been, and now are, the property of this cross complainant.

Wherefore, cross complainant prays that it may be decreed to be the owner of the premises in said original cross complaint described and that its title thereto may be quieted; that the lien of this cross complainant, referred to and set out in said original cross complaint, may be decreed to be superior and prior to the, or any, lien of the plaintiff or of the several defendants in said action.

N. M. RUICK,

Attorney for Cross Complainant, Residence, Boise,  
Idaho.

State of Idaho,  
County of Ada,—ss.

N. M. Ruick, of said county, being duly sworn, says that he is the attorney for the cross complainant in the above entitled action; that he has read the foregoing supplemental cross complaint and knows the contents thereof and believes the facts therein stated to be true; that the reason this verification is not made by an officer of the cross complainant is that cross complainant is a foreign corporation having no officer resident in the State of Idaho.

N. M. RUICK.

Subscribed and sworn to before me this 24th day of October, 1913.

(Seal)

FRANCES E. WALKER,

Notary Public for Ada County, State of Idaho.

(Endorsed): Filed October 24, 1913. A. L. Richardson, Clerk.

Receipt of a copy of the foregoing supplemental cross complaint of cross complainant, Pacific Coast Pipe Company, is hereby admitted this 24th day of October, 1913.

MAYER, MEYER, AUSTRIAN & PLATT,  
RICHARDS & HAGA,

Attorneys for Continental & Commercial Trust & Savings Bank, as Trustee.

.....,  
Attorney for Glenns Ferry Canal Company, Limited.

.....,  
Attorney for Kings Hill Extension Irrigation Company, Limited.

WOOD & DRISCOLL,  
Attorneys for Minneapolis Steel & Machinery Com-  
pany.

BENJ. S. CROW,  
Attorney for State of Idaho on the relation of John  
M. Haines, Governor et al., Intervenor.

T. S. RISSER,  
Attorney for Craster Farm & Orchard Company,  
Intervenor.

.....,  
Attorney for Defendant, C. R. Shaw.  
(Endorsed):

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*In the District Court of the United States, in and for  
the District of Idaho, Southern Division.*

*In Equity. No.....*

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee,  
Complainant,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY ET AL.,  
Defendant.

*Cross Bill.*

PACIFIC COAST PIPE COMPANY,  
Plaintiff,

vs.

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK ET AL., as Trustee,  
Defendants.



*Answer of Continental and Commercial Trust and Savings Bank, as Trustee, to the Cross Bill of Pacific Coast Pipe Company.*

Now comes Continental and Commercial Trust and Savings Bank, as Trustee, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and a citizen and resident of the State of Illinois, and, saving and reserving unto itself the benefit of all manner of motions to dismiss the Cross Bill herein, and all manner of exceptions to the errors and uncertainties in the Cross Bill herein, for answer thereunto, or to so much thereof as this defendant is advised it is necessary or material for it to make answer unto, answering, avers and alleges as follows:

1. This defendant admits that on or about the ..... day of January, 1913, it filed its Bill of Complaint in this court, upon the equity side thereof, against the Kings Hill Irrigation & Power Company, a corporation organized and existing under the laws of the State of Nevada, and against the cross complainant, Pacific Coast Pipe Company, and others; but neither admits nor denies that, in and by its said Bill of Complaint, it alleged as is set forth in words in said Cross Bill; but, for greater certainty, refers to its said Bill of Complaint filed herein, and makes the same a part hereof.

2. This defendant admits that the cross complainant, Pacific Coast Pipe Company, during all the times in said Cross Bill mentioned, was, and now

is, a corporation organized and existing under the laws of the State of Washington, with its principal place of business in Seattle, in said State; and that the defendant, Kings Hill Irrigation & Power Company, at all the times in the said Cross Bill mentioned was, and now is, a corporation organized and existing under the laws of the State of Nevada, and authorized to do business, and doing business, in the State of Idaho.

3. This defendant admits that the said Kings Hill Irrigation & Power Company now is, and during the times mentioned in said Cross Bill was, the owner of a certain ditch, flume and canal commonly known as the Kings Hill Canal, and the right of way therefor, in Lincoln, Twin Falls, Owyhee and Elmore Counties, in the State of Idaho, together with all appurtenances thereunto belonging or in any wise appertaining, and including all main and subordinate laterals, dams, headgates, rights of way, water rights, etc.; but is without knowledge as to whether said canal is more particularly described as set forth in said Cross Bill, or as to whether such property is the same, or part of the same property described in this defendant's original Bill of Complaint herein, and requires the cross complainant to make strict proof as to such particular description and as to whether said property is a part of the property described in this defendant's original Bill of Complaint herein, so far as it is advised that the same is necessary or material.

4. This defendant further admits that, in and by its said original Bill of Complaint, it seeks to foreclose a Trust Deed or mortgage, given to secure the payment of certain bonds claimed to have been executed and delivered by said defendant Kings Hill Irrigation & Power Company, and for greater certainty this defendant prays leave to refer to its said original Bill of Complaint for a more full and particular description of said Trust Deed or mortgage, and the bonds secured thereby, and for the relief sought by its said Bill of Complaint.

5. This defendant is without knowledge as to whether between the 13th day of July, 1909, and the 2nd day of July, 1910, said cross complainant, at the instance and request of said Kings Hill Irrigation & Power Company, and as an original contractor, furnished, sold, and delivered to said Kings Hill Irrigation & Power Company, at Ballard Station, Seattle, Washington, certain materials to be used, and which were actually used in the construction and repair of a ditch, flume and canal, as in said Cross Bill alleged, at the agreed price and of the reasonable value of Twelve Thousand Three Hundred Sixty-three and 24-100 (\$12,363.24) Dollars, and upon the terms stated; and is without knowledge as to the statement of said materials so furnished, together with the dates upon which the same were furnished, being the dates of invoice as set forth in said Cross Bill; and is without knowledge as to whether any part of said amount has been paid save and except the sum of Two Thousand Two Hundred Ninety-one

and 91-100 (\$2291.91) Dollars; and requires the cross complainant to make strict proof of each and every thereof, so far as it is advised the same is material or necessary. And, further answering, this defendant avers and alleges that it is informed and believes, and therefore states, that if any materials were furnished by said cross complainant to said Kings Hill Irrigation & Power Company, and used in the construction and repair of any ditch, flume and canal, such materials were contracted for and used subsequent to the execution and recording of the Trust Deed or Mortgage to this defendant set forth in this defendant's original Bill of Complaint herein, and with knowledge by said cross complainant of said Trust Deed or Mortgage; and that any rights accruing to said cross complainant on account of the furnishing of any such materials, and the use thereof, are subsequent to, and subject to, the rights and lien of this defendant in, to and upon all of the property of said Kings Hill Irrigation & Power Company, accruing under and by virtue of said Trust Deed or Mortgage, as set forth in this defendant's original Bill of Complaint herein.

6. This defendant is without knowledge as to whether any amounts whatsoever became due and owing to the cross complainant from said defendant Kings Hill Irrigation & Power Company on account of materials furnished, sold and delivered, as alleged in said Cross Bill; and requires the cross complainant to make strict proof thereof, so far as it is advised the same is necessary or material.



7. This defendant is without knowledge as to whether said cross complainant ceased to furnish materials for said ditch, flume and canal on July 2, 1910, and as to whether, within ninety days after it had so ceased to furnish materials, and for the purpose of perfecting a lien upon said ditch, flume and canal, for the money so alleged to be due said cross complainant, said cross complainant, within the time allowed by the laws of the State of Idaho, filed for record in the offices of the County Recorders of Elmore and Owyhee Counties, State of Idaho, its verified lien claim, or as to whether said claim was duly recorded on the records of Elmore County on August 4, 1910, in Book 18 of Liens, on page 401, and on the records of Owyhee County on August 5, 1910, in Book 3 of Leases and Liens, at page 200, or as to whether a copy of said lien claim attached to said Cross Bill is a true and correct copy thereof; and prays that the cross complainant may be required to make strict proof of each and every of its allegations in that regard, so far as it is advised the same is necessary or material.

8. This defendant is without knowledge as to any amounts paid by said cross complainant for the filing or recording of its said lien claims, or as to whether the sum of Seven Hundred and Fifty (\$750.00) Dollars was and is a reasonable fee to be allowed to said cross complainants for the prosecution and foreclosure of any such alleged lien claim as provided by the laws of the State of Idaho; and requires the cross

complainant to make strict proof thereof so far as the same may be necessary or material.

9. This defendant is without knowledge as to whether the cross complainant thereafter at any time, and within the time allowed by the laws of the State of Idaho, commenced an action, and proceeded, in the District Court of the Fourth Judicial District of the State of Idaho, in and for Elmore County, to enforce its said alleged lien; or as to whether summons was duly issued in said action, and served on said Kings Hill Irrigation & Power Company; or as to whether said Kings Hill Irrigation & Power Company appeared in said action, and procured said cause to be removed into the United States Circuit Court, for the District of Idaho, Southern Division; or as to whether said Kings Hill Irrigation & Power Company filed its answer in said cause; or as to whether such proceedings were thereafter had in said United States Circuit Court, or a decree of said court duly entered in said cause on December 30, 1911, by which decree it was ordered, adjudged and decreed that there was then due and owing to the cross complainant by the defendant Kings Hill Irrigation & Power Company the sum of Ten Thousand Seventy-one and 33-100 (\$10,071.33) Dollars, together with accrued interest of Eight Hundred Forty-five and 99-100 (\$845.99) Dollars, and attorneys' fees of Seven Hundred and Fifty (\$750.00) Dollars, making a total of Eleven Thousand Six Hundred Seventy-one and 52-100 (\$11,671.52) Dollars; or as to whether, by said decree, said sum was adjudged to

constitute a lien upon the ditch, flume, canal and right of way described in said decree; or as to whether said property therein described is the same as that referred to in said Cross Bill, or is a part of the same property referred to and described in the original Bill of Complaint filed herein by this defendant; or as to whether said decree directed that said property should be sold by a Special Master appointed by the court for that purpose, within ninety days; or as to whether any proceedings were thereupon taken, and the property in said decree described sold by said Special Master; or as to whether said Special Master made any report of such sale; and requires the complainant to make strict proof of each and every thereof, so far as it is advised that the same may be necessary or material. And, further answering, this defendant avers and alleges that this defendant, as Trustee under said Trust Deed or Mortgage from the Kings Hill Irrigation & Power Company, set forth in its said original Bill of Complaint herein, was not made a party defendant to, and did not appear in, any proceedings taken or had by said cross complainant to enforce its said alleged lien against any of the property of the Kings Hill Irrigation & Power Company; and that this defendant, as such Trustee, at all times had, and now has, a first and prior lien upon all of the property of said Kings Hill Irrigation & Power Company, including the property upon which a lien is claimed by said cross complainant; and that all right, title and interest of said cross complainant on account of its

said alleged lien, are inferior and subsequent to the lien of this defendant accruing under and by virtue of the Trust Deed or Mortgage aforesaid; and that any and all proceedings had or taken by said cross complainant on account of said alleged lien were, and are, of no force and effect against this defendant, and against the right, title and interest of this defendant in and to the property of said Kings Hill Irrigation & Power Company described in said Cross Bill.

10. This defendant is without knowledge as to whether said Kings Hill Irrigation & Power Company, on or about May 1, 1908, entered into a contract in writing with the State of Idaho, whereby the said company undertook and agreed with said state to construct an irrigation system or works, for the purpose of irrigating and reclaiming certain arid public lands of the United States, under the provisions of the Act of Congress known as the Carey Act, and Acts amendatory thereof; and is without knowledge as to whether the materials alleged to have been sold and delivered by the cross complainant to said Kings Hill Irrigation & Power Company were to be used, and were actually used, in the construction and completion of the canals and works required to be constructed, and which were constructed, under the terms of said alleged contract with the State of Idaho; and is without knowledge as to whether said irrigation works so constructed by said Kings Hill Irrigation & Power Company under said alleged contract with the State of Idaho, were constructed over, along, across and upon the public lands of the United States, and the lands of



the State of Idaho, or as to whether the completion of said canals and other structures, comprising the main canal and distribution system of the works so to be constructed, was essential and necessary to the securing to said Kings Hill Irrigation & Power Company of a right of way therefor over said public lands of the United States, and was essential and necessary to the securing to said Kings Hill Irrigation & Power Company of a right, title or interest in and to such right of way; and requires the cross complainant to make strict proof of each and every thereof, so far as it is advised the same is necessary or material.

11. Upon information and belief, this defendant denies that said Kings Hill Irrigation & Power Company had acquired no right, title or interest whatsoever in and to said right of way prior to the furnishing by said cross complainant of the materials in said Cross Bill referred to, and their actual use in constructing and completing the canals and works referred to, being the canals, structure and erection works set out and described in said Cross Bill, and in the original Bill of Complaint herein of this defendant; and denies that the lien of said cross complainant for any materials so alleged to have been furnished to be used, and so alleged to have been actually used, in the said irrigation works and system, canals, pipe lines and other structures, as set out in said Cross Bill, was and is prior and superior to the lien of the Trust Deed or Mortgage set out in this defendant's original Bill of Complaint herein; but, on the contrary, this defendant avers and alleges

that any lien of said cross complainant described in said Cross Bill, is inferior and subsequent to the lien of said Trust Deed or Mortgage to this defendant, set out in this defendant's said original Bill of Complaint herein.

12. This defendant admits that, in addition to the claim of lien by the Trust Deed or Mortgage asserted by this defendant and set out in its original Bill of Complaint herein, the Glenns Ferry Canal Company, Limited, Kings Hill Extension Irrigation Company, Limited, Minneapolis Steel and Machinery Company, State of Idaho, on the relation of John M. Haines, Governor, Joseph H. Peterson, Attorney General, Wilfred L. Gifford, Secretary of State, Grace M. Shepherd, Superintendent of Public Instruction, and Fred Huston, State Auditor, constituting the State Board of Land Commissioners of the State of Idaho, Craster Flat Farm & Orchard Company, and C. R. Shaw, assert, or claim to have, some right, title or interest in and to the irrigation works and property of said Kings Hill Irrigation & Power Company; but this defendant avers and alleges that all such right, title and interest are subsequent to, and inferior to, the lien, and right, title and interest, of this defendant, upon, in and to the irrigation works and all the property of said Kings Hill Irrigation & Power Company; and this defendant is without knowledge as to whether such right, title or interest of said defendants other than the Kings Hill Irrigation & Power Company and Kings Hill Extension Irrigation Company, Limited, are subsequent and subordinate to any right, title, inter-

est or lien of the cross complainant; but this defendant is informed and believes, and therefore states, that the right, title and interest of said Glenns Ferry Canal Company, Limited, and said Kings Hill Extension Irrigation Company, Limited, in and to said irrigation works and property, are superior to any right, title, interest or lien therein of said cross complainant.

13. Further answering this defendant denies that the cross complainant is entitled to any of the relief sought in its said Cross Bill.

14. This defendant prays that it may, under the rules of court in such case made and provided, be permitted to avail itself of all manner of defense, in law or in equity, to the merits of the Cross Bill, in this Answer set forth, of which it might have availed itself by a motion to dismiss, with the same force and effect as though it had filed a motion to dismiss the Cross Bill herein.

15. As to all matters and things in said Cross Bill alleged, and by this Answer not expressly admitted or denied, or not averred to be without the knowledge of this defendant, this defendant denies the same, and requires the complainant to make strict proof thereof.

16. And as a further and separate defense to the Cross Bill filed by said cross complainant, this defendant alleges the fact to be that the said cross complainant has wholly failed to comply with the laws of the State of Idaho relative to foreign corporations doing business in said state, and particu-

larly with Section 2792 of the Revised Codes of Idaho. That said cross complainant during all the times mentioned in its cross complaint was doing business in the State of Idaho, but notwithstanding such fact it failed and neglected to file with the Secretary of State of the State of Idaho a copy of its Articles of Incorporation, certified or otherwise, and failed and neglected to file in the office of the County Recorder of any of the Counties in the State of Idaho a copy of its said Articles of Incorporation, certified or otherwise, and failed and neglected to designate any person residing in the State of Idaho, or otherwise, upon whom process issued by authority of or under any laws of the State of Idaho might or could be served, and failed and neglected to file any such designation of agent with the Secretary of State of the State of Idaho, or in the office of the County Recorder of any of the Counties in the said State of Idaho. But the said cross complainant now is and during all the times mentioned in its said Cross Bill has been in default in said matters, and each and every of them. That by reason of the said defaults of said cross complainant it cannot take or hold title to any realty within the State of Idaho, and the pretended conveyance or certificate of sale under which said cross complainant claims an interest in the said irrigation works, water rights, property and franchises, is absolutely null and void and ineffectual for any and all purposes.

17. As a further and separate defense to the Cross Bill of said cross-complainant, this defendant alleges on its information and belief that the said



decree of foreclosure claimed to have been recovered by the said cross-complainant against the said Kings Hill Irrigation & Power Company and the said alleged conveyance under said decree are void and ineffectual for the reason that the said Glenns Ferry Canal Company, Limited, is and was at the time of the commencement of the said suit to foreclose cross-complainant's alleged lien and indispensable party defendant to said suit of foreclosure, and said Glenns Ferry Canal Company, Limited, was not made a party defendant thereto or therein.

And this defendant having fully answered the Cross Bill of cross-complainant further moves and prays that this defendant be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK,

As Trustee.

By Mayer, Meyer, Austrian & Platt,  
Of Chicago, Illinois,  
and Richards & Haga,

Of Boise, Idaho,

Hal C. Bangs

Its Solicitors.

Of Chicago, Illinois,

Oliver O. Haga

Of Boise, Idaho,

Solicitors and of Counsel for said Defendant,

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee.

(Endorsed): Filed April 11, 1913. A. L. Richardson, Clerk.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee,  
Complainant,

vs.

KINGS HILL IRRIGATION AND POWER COM-  
PANY, a Corporation, GLENN'S FERRY CA-  
NAL COMPANY, LIMITED, a Corporation,  
PACIFIC COAST PIPE COMPANY, a Corpora-  
tion, KINGS HILL EXTENSION IRRIGATION  
COMPANY, a Corporation, MINNEAPOLIS  
STEEL AND MACHINERY COMPANY, a Cor-  
poration, and C. R. SHAW,  
Defendants.

PACIFIC COAST PIPE COMPANY, a Corporation,  
Plaintiff,

vs.

CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee, GLENN'S FERRY  
CANAL COMPANY, LIMITED, a Corporation,  
KINGS HILL EXTENSION IRRIGATION  
COMPANY, LIMITED, a Corporation, MINNE-  
APOLIS STEEL & MACHINERY COMPANY, a  
Corporation, STATE OF IDAHO, on the relation  
of John M. Haines, Governor, Joseph H. Peterson,  
Attorney General, Wilfred L. Gifford, Secretary of  
State, Grace M. Shepherd, Superintendent of Pub-  
lic Instruction, and Fred Huston, State Auditor,  
constituting the STATE BOARD OF LAND

COMMISSIONERS OF THE STATE OF IDAHO, Intervener, CRASTER FLAT FARM AND ORCHARD COMPANY, a Corporation, Intervener, and C. R. SHAW,

Defendants.

*In Equity.*

AMENDED ANSWER TO THE CROSS COMPLAINT OF THE PACIFIC COAST PIPE COMPANY, A CORPORATION.

Comes now the defendant, the Minneapolis Steel and Machinery Company, a corporation, and in answer to the Cross Bill of the Pacific Coast Pipe Company, a corporation, the complainant above named, admits, denies and alleges as follows:

Admits that the cross complainant, the Pacific Coast Pipe Company, was, at all times mentioned in their said Cross Bill, and now is a corporation, organized and existing under the laws of the State of Washington, with its principal place of business in Seattle, in said State:

Admits that the defendant, the Kings Hill Irrigation and Power Company, at all times mentioned in the said Cross Bill, was and now is a corporation, organized and existing under and by virtue of the laws of the State of Nevada, authorized to do business, and doing business in the State of Idaho; admits that at all times mentioned in said Cross Bill, the Kings Hill Irrigation and Power Company was and now is the owner of that certain ditch, flume and

canal commonly known as the Kings Hill Canal and the right of way therefor, located in Lincoln, Twin Falls, Owyhee and Elmore Counties, State of Idaho, together with all appurtenances thereunto belonging or in anywise appertaining, and including all main and subordinate laterals, dams, headgates, rights of way, water rights, etc., which said canal is more particularly described on page 10 of the said cross complaint of the said Pacific Coast Pipe Company, to which reference is made hereby;

Admits that the said property is the same, or part of the same, property described in the original bill of complaint in this action, on which the complainant therein, the Continental and Commercial Trust and Savings Bank, as Trustee, seeks to foreclose a trust deed, or mortgage, as described in the said cross complaint.

As to whether or not between the 13th day of July, 1909, and the 2nd day of July, 1910, or at any other time, or at all, the cross complainant, at the instance and request of the said Kings Hill Irrigation and Power Company, or any one else, and as an original contractor, or otherwise, furnished, sold and delivered or furnished, or sold, or delivered to the said Kings Hill Irrigation and Power Company at Ballard Station, Seattle, State of Washington, or elsewhere, certain materials to be used, and which were actually used in construction and repair of the said ditch, flume and canal, or ditch, or flume, or canal hereinbefore described, or otherwise, at the agreed price and of the reasonable value of Twelve Thous-



and Three Hundred Sixty-three and 24-100 (\$12,363.24) Dollars, or at any other price or value, this defendant is without knowledge and, as to whether the same materials, or any materials, were sold upon the following terms, to-wit: payment to be made in cash, and if not paid interest to be charged after thirty days from the date of invoice, or upon any other terms, this defendant is without knowledge, and therefore denies the same, and the whole thereof.

That, as to whether or not the statement set forth on page 11 of the cross complaint, to which reference is hereby made, is a statement of the said material so furnished, or of any material furnished, or of the date upon which the same, or any materials, were furnished, or whether the said dates in said statement are the dates of invoices respectively, or whether there were or are any invoices, this defendant is without knowledge as to whether or not any materials were furnished as alleged, or otherwise, and therefore denies the same.

As to whether or not any part of the said amount as set forth has been paid, save and except the sum of Two Thousand Two Hundred Ninety-one and 91-100 (\$2,291.91) Dollars, as set forth on page 12 of said cross complaint, or whether any amount whatsoever has been paid by the said Kings Hill Irrigation and Power Company to cross complainant, this defendant is without knowledge, and therefore denies the same, and the whole thereof.

As to whether or not there became or is now due and owing to cross complainant from said Kings Hill Irrigation and Power Company on account of materials so furnished, sold and delivered, or furnished, or sold or delivered, as alleged in the said cross complaint, or otherwise, the sum of Ten Thousand and Seventy-one and 33-100 (\$10,071.33) Dollars, or any other sum or sums, together with, or without, interest to the date of payment, or any other date, at the lawful rate of 7% per annum, or at any other rate, upon each and every of the several items of merchandise furnished, as alleged in said Cross Bill, or otherwise, from and after thirty days from the date of said several items, or any other time, less interest on the several credits hereinbefore in said cross complaint set forth, or otherwise, or as to whether there is or was any sum whatsoever due and owing to the said cross complainant from the said Kings Hill Irrigation and Power Company, this defendant is without knowledge, and therefore denies the same and the whole thereof.

As to whether said cross complainant ceased to furnish said materials for said ditch, flume and canal, as aforesaid, on the 2nd day of July, 1910, or at any other time, or whether or not cross complainant furnished any materials whatsoever to said Kings Hill Irrigation and Power Company, this defendant is without knowledge and, therefore, denies the same, and the whole thereof, and as to whether or not within ninety days after it had ceased to furnish materials therefor, or whether it furnished ma-

terials therefor for the purpose of perfecting a lien on the said ditch, flume and canal, or flume, or ditch, or canal, or for any other purpose, for the moneys so due on account of materials so furnished as aforesaid, or otherwise, or whether any moneys whatsoever were due cross complainant, and as to whether cross complaint, within the time allowed by the law of the State of Idaho, or at any other time, filed for record, in the office of the County Recorder of Elmore and Owyhee Counties, State of Idaho, or at any other place, its claim of lien, duly verified, or otherwise, this defendant is without knowledge, and therefore denies the same, and the whole thereof.

Defendant admits that the said claim of lien was duly recorded in the records of Elmore County on August 4, 1910, and on the records of Owyhee County on August 5, 1910, as alleged in the Cross Bill.

Defendant admits that the said cross complainant paid for the said recording of lien the sum of Four and 20-100 (\$4.20) Dollars.

Denies that the sum of Seven Hundred and Fifty (\$750.00) Dollars is a reasonable fee to be allowed cross complainant for the prosecution and foreclosure of the said lien, as provided by the laws of the State of Idaho, or otherwise.

Defendant admits that on the 31st day of October, 1910, and within the time allowed by the laws of the State of Idaho, cross complainant commenced an action and proceeding in the District Court of the

Fourth Judicial District of the State of Idaho, in and for Elmore County, being a proper court in which to institute such proceedings, to enforce its said lien, and summons was duly issued in said action and served on the said Kings Hill Irrigation and Power Company, which thereupon appeared in said action, and procured said cause to be removed to the United States Circuit Court for the District of Idaho, Southern Division; that said Kings Hill Irrigation and Power Company filed its answer in said cause and such proceedings were thereafter had therein in said United States Circuit Court that a decree of said court was duly entered in said cause on the 30th day of December, 1911, by which decree it was ordered, adjudged and decreed that there was then due and owing to this cross complainant, plaintiff in said action, by the defendant therein, Kings Hill Irrigation and Power Company, a defendant named in this action, the sum of Ten Thousand Seventy-one and 33-100 (\$10,071.33) Dollars, together with accrued interest thereon at the rate of 7% per annum from October 2nd, 1910, to the date of said decree, said interest amounting to Eight Hundred Forty-five and 99-100 (\$845.99) Dollars, together with the further sum of Four and 20-100 (\$4.20) Dollars for filing and recording said claim of lien, and the further sum of Seven Hundred Fifty (\$750.00) Dollars attorney's fees upon the foreclosure of said lien, making a total of Eleven Thousand Six Hundred Seventy-one and 52-100 (\$11,671.52) Dollars, and that said Pacific Coast Pipe Company, plaintiff in said action



and cross complainant herein, have and recover of the said Kings Hill Irrigation and Power Company the said sum of Eleven Thousand Six Hundred Seventy-one and 52-100 (\$11,671.52) Dollars, with interest until paid, and the costs of said cause, and that execution issue therefor.

Defendant admits that it was further, by said decree, ordered, adjudged and decreed that the said sum of \$11,671.52, with accruing interest, constituted a lien upon the ditch, flume and canal and right of way thereinbefore described in the complaint in said action, together with all appurtenances and including all main and subordinate laterals, dams, headgates, rights of way, water right, etc., which said property referred to, set out and described in said decree, is the same as is hereinbefore in this cross complaint described and is the same, or a part of the same, property referred to and described in the original bill of complaint in this action of the Continental & Commercial Trust and Savings Bank.

Defendant admits that it was further, by said decree, ordered, adjudged and decreed that, if said sum of money, with accruing interest and costs, be not paid by the said Kings Hill Irrigation and Power Company within ninety days from the entry of said decree, then R. M. McCracken, Special Master appointed by the Court for that purpose, should sell the property therein described, to satisfy said lien, to the highest bidder for cash at public auction at the door of the court house of Owyhee County,

State of Idaho, in the town of Silver City, in said Owyhee County, State of Idaho, being the county in which the greater part of said property was and is located.

As to whether or not the said sum of money so adjudged by said decree to be due and owing to the plaintiff therein, the Pacific Coast Pipe Company, the cross complainant, or any part or portion thereof, was not paid by the Kings Hill Irrigation and Power Company or any one else within ninety days from the entry of said decree, or any other time, or at all, this defendant is without knowledge, and therefore denies the same, and the whole thereof.

Defendant admits that on the 28th day of May, 1912, at Silver City, in Owyhee County, State of Idaho, by said special master, pursuant to the order and direction contained in said decree, and after due notice of such sale, offered for sale to the highest bidder and sold to this cross complainant, plaintiff in said action, for the sum of Twelve Thousand One Hundred Ninety-two and 60-100 (\$12,192.60) Dollars, being the full amount named in said judgment and decree, with accrued interest and costs, including master's fees, disbursements and commissions on such sale; that said decree further provided, ordered and decreed that the plaintiff might become a purchaser at such sale, and that said Special Master, after the time allowed by law for redemption, should execute a deed to the purchaser of said premises on said sale.

Defendant admits that, thereupon, said Special Master made his report of said sale, and such proceedings were thereupon had that said sale was, on the 9th day of July, 1912, by an order of said court, duly confirmed.

Defendant admits that, heretofore, to-wit, on May 1st, 1908, the said Kings Hill Irrigation and Power Company entered into a contract in writing with the State of Idaho, whereby the said company undertook and agreed with said State to construct an irrigation system or works for the purpose of irrigating and reclaiming certain arid public lands of the United States situated in the counties of Twin Falls, Owyhee and Elmore, in said State of Idaho, under the provisions of Section 4 of an Act of Congress, approved August 18, 1894, commonly known as the Carey Act, and the acts amendatory thereof, and the laws enacted by the State of Idaho in pursuance of the powers granted by said acts of Congress. That a copy of said contract between the said Kings Hill Irrigation and Power Company and the State of Idaho is of the pleadings, records and files in this action and is attached to the complaint in intervention of the State of Idaho, heretofore filed herein as Exhibit 3, so on file in this action as an exhibit attached to said complaint in intervention.

Defendant admits that the works so to be constructed, and which were constructed by said Kings Hill Irrigation and Power Company consisted of a dam or dams, main and subordinate canals, main and subordinate laterals, fluming, trestle works, pipe



lines, bridges for supporting pipe lines, head gates, waste gates and other structures, as described in said contract with the State of Idaho, Exhibit 3, hereinbefore referred to, and the said works were to be constructed and completed and turned over in accordance with the specifications, terms, provisions and conditions of the said contract referred to.

As to whether or not the materials so sold and delivered, or sold, or delivered by this cross complainant to the Kings Hill Irrigation and Power Company, as in the cross complaint set forth, were to be used and were actually used, or were to be used, or were to be actually used in the construction and completion, or construction or completion, of the canals and works, or canals or works, required to be constructed and which were constructed or required to be constructed, or which were constructed under the terms of the said contract for the irrigation and reclamation of the lands referred to and described therein, or otherwise, this defendant is without knowledge and therefore denies the same; and whether any materials were sold and delivered, or sold or delivered by the cross complainant to the said Kings Hill Irrigation and Power Company, this defendant is without knowledge and therefore denies the same.

Defendant admits that the said irrigation works to be constructed, and which were constructed, by the said Kings Hill Irrigation and Power Company under said contract with the State of Idaho, were con-



structed over, along and across and upon the public lands of the United States and the lands of the State of Idaho, and the completion of said canals and other structures, comprising the main canal and distributing system of the works so to be constructed, was essential and necessary to the securing of the said Kings Hill Irrigation and Power Company of a right of way therefor over said public lands of the United States and essential and necessary to the securing of the said Kings Hill Irrigation and Power Company of a right, title, or interest in and to such right of way; as to whether or not the said Kings Hill Irrigation and Power Company had, or acquired any right, title or interest whatsoever, in and to said right of way prior to this cross complainant of the materials hereinbefore in this cross complaint referred to and their actual use in the construction and completion of the canals and works referred to, being the canals, structures and irrigation works hereinbefore set out and described in this cross complaint and in the original bill of complaint herein of the Continental & Commercial Trust and Savings Bank, as Trustee, or at any other time, this defendant is without knowledge, and as to whether or not cross complainant furnished any materials, as set forth in said cross complaint, and whether any materials furnished by cross complainant were used in the construction and completion, or construction or completion, of said canals or works, in said cross complaint referred to, this defendant is without knowledge, and therefore denies the same.

Defendant admits that it has, and claims to have, right, title and interest in and to certain property belonging to the Kings Hill Irrigation and Power Company, and alleges the fact to be:

That the Kings Hill Irrigation and Power Company, a corporation, the defendant above named, and the Elmore Development Company, a corporation, are jointly indebted to this defendant, the Minneapolis Steel and Machinery Company, a corporation, in the sum of \$10,246.03, together with interest thereon at the rate of seven per cent. per annum, since March 1st, 1910, for the construction of a certain steel bridge across the Snake River, at or near the town or village of King Hill, Elmore County, Idaho, the said bridge abutting the bank of the Snake River in Elmore County, Idaho, at a point in Section 12, Lot 1, Township 5 South, Range 10 East, Boise Meridian, near said village of King Hill, and abutting the southerly bank of said river in Owyhee County, Idaho, at a point directly south of the aforesaid abutment in Elmore County; and plaintiff is informed and believes, and hence on information and belief alleges, that the land on which said bridge abuts the southern bank of Snake River in Owyhee County is owned by the defendant, the Kings Hill Irrigation and Power Company, and this defendant alleges that the said bridge is the property of said Elmore Development Company and the said Kings Hill Irrigation and Power Company;

That on the 28th day of February, A. D. 1913, at 25 minutes past 10 o'clock A. M. this defendant filed

its claim of lien for the said sum of \$10,246.03, and interest as aforesaid, in the office of the County Recorder of Elmore County, Idaho, copy of which said claim of lien is attached hereto as Exhibit "A," hereby referred to and made a part hereof;

That on the 18th day of July, 1912, and prior to the institution of this action, this defendant, as plaintiff, instituted an action in the District Court of the Fourth Judicial District of the State of Idaho in and for Elmore County, against the Kings Hill Irrigation and Power Company and the Elmore Development Company, as defendants, demanding judgment against the said defendants, and each of them, for the sum of \$10,246.03, with interest thereon as aforesaid, and for \$1,000.00 attorney's fees, and costs of said action, and for the foreclosure of the said lien hereinbefore described, which said action is now pending in said court;

Denies that the said property, on which defendant claims its said lien, as aforesaid, is the same property, or any part of the same property described in the cross bill of said Pacific Coast Pipe Company, and alleges the fact to be that the said property described in said cross complaint is not a part of the property described in the said cross bill nor in the claim of lien attached thereto as Exhibit "A," or the property described in the judgment and decree set forth in said cross complaint, nor is the said property described and embraced in the defendant's, the Minneapolis Steel and Machinery Company's said lien, a part of the irrigation system of the said Kings

Hill Irrigation and Power Company, on and for which plaintiff claims to have furnished materials.

And for a further and separate defense to said cross bill, this defendant, the Minneapolis Steel and Machinery Company, alleges, that the said bridge, embraced in its said claim of lien, as hereinbefore set forth, and the land upon which the same is situated, is not required for the convenient use and occupation of the improvements claimed by said Pacific Coast Pipe Company under its aforesaid claim of lien and its said judgment and decree, as hereinbefore set forth.

And for a further and separate defense to the cross bill of said Pacific Coast Pipe Company, this defendant, the Minneapolis Steel and Machinery Company, alleges, that the cause of action set forth in the said cross bill, if any, is wholly barred by the provision of Section 5118 of Part 3 of Title 4, Chapter 1, of the Revised Codes of the State of Idaho, providing that: "No lien provided for in this chapter binds any building, mining claim, improvement or structure for a longer period than six months after the claim has been filed, unless proceedings are commenced in a proper court to enforce such lien."

WHEREFORE, the defendant, the Minneapolis Steel and Machinery Company, prays that the bill of the said Pacific Coast Pipe Company, insofar as it affects the property hereinbefore described as embraced by the lien of the said Minneapolis Steel and Machinery Company be denied, and that the



court grant to said Pacific Coast Pipe Company no relief in this action which will in any manner involve the property described in defendant's lien as hereinbefore set forth, and for such other and further relief as to this court may seem meet and equitable.

MINNEAPOLIS STEEL AND MACHINERY  
COMPANY,

By Dean Driscoll,  
Attorney and Agent.

FREMONT WOOD, and  
DEAN DRISCOLL,

Residing at Boise, Idaho,  
Solicitors and of Counsel for the Minneapolis Steel  
and Machinery Company, a Corporation.

Service of the within and foregoing answer, by receipt of copy thereof, acknowledged this 1st day of October, 1913.

N. M. RUICK,

Attorney for Pacific Coast Pipe Co.

J. H. PETERSON,

BENJAMIN S. CROW,

Attorneys for State of Idaho and Priest et al., Interveners.

RICHARDS & HAGA,

MAYER, MEYER, AUSTRIAN & PLATT,

Attorneys for Complainant.

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*Exhibit "A".*

MINNEAPOLIS STEEL AND MACHINERY  
COMPANY, a Corporation,

vs.

KINGS HILL IRRIGATION AND POWER COM-  
PANY, a Corporation, and THE ELMORE DE-  
VELOPMENT COMPANY, a Corporation.

*Claim of Lien.*

NOTICE IS HEREBY GIVEN, That the under-  
signed, MINNEAPOLIS STEEL AND MACHIN-  
ERY COMPANY, a corporation organized and ex-  
isting under the laws of the State of Minnesota, hav-  
ing its principal office at Minneapolis in the said  
State of Minnesota, as an original contractor, files  
this, its notice of lien, claiming a lien under the pro-  
visions of Chapter 1, Title IV, Part III, Section 5110  
to 5124 inclusive, Idaho Revised Codes, of, in and  
to that certain bridge heretofore constructed across  
Snake River in Elmore County, Idaho, at or near  
the town or village of King Hill in said Elmore  
County, together with the approaches thereto and  
sufficient ground on either side of the approaches  
thereof for the convenient use and operation of said  
bridge; and to that end notice is hereby given that  
the undersigned, Minneapolis Steel and Machinery  
Company is the name of the person or corporation  
who entered into a contract in writing, on or about  
the fifteenth day of September, A. D. 1909, with the  
King Hill Irrigation and Power Company, a corpo-  
ration organized under the laws of the State of Ne-  
vada, and the Elmore Development Company, a

corporation, organized under the laws of the State of Idaho, for furnishing and erecting, complete ready for travel, a 353 foot steel highway bridge to be built over the Snake River at King Hill, Idaho; including all steel work, plank floor, railing, wheel grades, tubular piers, concrete cribs and rock fill for same, and ten feet of earth approach on each end of the bridge, all to be erected complete in place ready for travel; said bridge to be constructed in accordance with plans and specifications prepared by the Minneapolis Steel and Machinery Company and approved by the engineer of the said Kings Hill Irrigation and Power Company and the said Elmore Development Company, with a guaranty that said bridge "will sustain the loads specified in the specifications, as well as a 20-inch wood stave pipe filled with water," for which said structure complete, the said Kings Hill Irrigation and Power Company and the said Elmore Development Company agreed to pay the sum of Ten Thousand Five Hundred (\$10,500.00) Dollars, as follows to-wit: Five Thousand Two Hundred and Fifty (\$5,250.00) Dollars thirty days after the arrival of all the material at the bridge site, and the balance of the contract price, to-wit: Five Thousand Two Hundred and Fifty (\$5,250.00) Dollars within sixty days after completion of the contract, or any deficiencies therein.

That the said contract, and the deficiencies therein, was performed in full in every respect on the 30th day of December, 1911.

That no part of said contract price has been paid and there is now due and owing thereon from the said Kings Hill Irrigation and Power Company and the said Elmore Development Company the sum of Ten Thousand Two Hundred and Forty-six and 3-100 (\$10,246.03) Dollars, together with interest thereon at the rate of seven (7%) per cent. per annum since March 1st, 1910; and that said amount last mentioned is due and owing to this claimant for work and material done and supplied to and for the construction and completion of the said steel bridge, its foundations, supports and approaches, after deducting all just credits and offsets.

The name of the claimant is the Minneapolis Steel and Machinery Company and the names of the parties for whom said work was performed and materials furnished are Kings Hill Irrigation and Power Company and the Elmore Development Company, and the date when the last item of labor was performed and labor furnished in the construction of said bridge and completion thereof was December 30, 1911, and the following is a description of the property to be charged with this lien, to-wit:

The 353 foot steel bridge over the Snake River at King Hill, Elmore County, Idaho, together with the necessary approaches thereto and the necessary foundations and supports thereof, and the names of the owners, or reputed owners of the property charged with this lien at the time of the making of this statement are the Kings Hill Irrigation and



Power Company and the Elmore Development Company, as aforesaid.

Dated February 13th, 1912.

MINNEAPOLIS STEEL AND MACHINERY  
COMPANY,

By M. H. Hanauer.

State of Utah,  
County of Salt Lake,—ss.

M. H. Hanauer of Salt Lake City, State of Utah, being first duly sworn deposes and says: That he is the agent of the Minneapolis Steel and Machinery Company, claimant in the foregoing claim of lien; that he has knowledge of the facts stated in said claim of lien and that he believes the claim therein set forth to be just.

M. H. HANAUER.

Subscribed and sworn to before me this 13th day of February, 1913.

(Seal)

F. E. BARNUM,  
Notary Public.

(Endorsed as follows):

“Claim of Lien.

MINNEAPOLIS STEEL AND MACHINERY COMPANY, a Corporation, vs. KINGS HILL IRRIGATION AND POWER COMPANY, a Corporation, and The ELMORE DEVELOPMENT COMPANY, a Corporation.

14481

State of Idaho,

County of Elmore,—ss.

I hereby certify that this instrument was filed for record at the request of Fremont Wood at 25 minutes past 10 o'clock and duly recorded in Book 18 of Liens at page 448.

F. C. SMITH, Ex-Officio Recorder,

By P. H. Smith, Deputy.

Fees, \$2.00

(Endorsed): Filed Oct. 1, 1913. A. L. Richardson, Clerk.

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United States of America,

State of Idaho,—ss.

*In the District Court of the United States in and for  
the District of Idaho, Southern Division.*

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee,

Complainant,

vs.

KINGS HILL IRRIGATION AND POWER COMPANY, a Corporation, GLENN'S FERRY CANAL COMPANY, LIMITED, a Corporation, PACIFIC COAST PIPE COMPANY, a Corporation, KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED, a Corporation, MINNEAPOLIS STEEL AND MACHINERY COMPANY, a Corporation, and C. R. SHAW,

Defendants.

*In Equity.*

PACIFIC COAST PIPE COMPANY, a Corporation,  
Plaintiff,

vs.

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee, GLENN'S  
FERRY CANAL COMPANY, LIMITED, a Cor-  
poration, KINGS HILL EXTENSION IRRIGA-  
TION COMPANY, LIMITED, a Corporation,  
MINNEAPOLIS STEEL AND MACHINERY  
COMPANY, a Corporation, STATE OF IDAHO,  
on the relation of John M. Haines, Governor, Jo-  
seph H. Peterson, Attorney General, Wilfred L.  
Gifford, Secretary of State, Grace M. Shepherd,  
Superintendent of Public Instruction, and Fred  
Huston, State Auditor, constituting the State  
Board of Land Commissioners of the State of Ida-  
ho, Intervener; CRASTER FLAT FARM & OR-  
CHARD COMPANY, a Corporation, Intervener,  
and C. R. SHAW,

Defendants.

*Answer to Cross Bill.*

THE ANSWER OF GLENN'S FERRY CANAL  
COMPANY, LIMITED, DEFENDANT, TO  
THE CROSS BILL OF THE CROSS  
COMPLAINANT, PACIFIC COAST  
PIPE COMPANY.

This defendant, now and at all times hereafter  
saving and reserving unto itself all benefit and ad-  
vantage or exception had or which might be had or

taken to the many errors, uncertainties and imperfections in said Cross Bill contained, for answer thereunto, or to so much or such parts thereof as this defendant is advised is, or are, necessary for it to make answer unto, answering says:.

1. This defendant admits that during the month of January, 1913, the Continental and Commercial Trust and Savings Bank as Trustee filed its Bill of Complaint in this Court, upon the equity side thereof, against Kings Hill Irrigation & Power Company, and this defendant, and other defendants; and admits that in said Bill of Complaint said complainant made certain averments and prayed certain relief, some of which is substantially stated in the Cross Bill filed herein, but all of which averments and prayers for relief are more completely and exactly stated in said original Bill of Complaint, reference to which is hereby made.

2. This defendant denies that Kings Hill Irrigation & Power Company, a defendant herein, is or was, during the times in said Cross Bill mentioned, the owner of the ditch, flume and canal referred to in said Cross Bill, or of the right of way therefor, or the appurtenants thereunto belonging, but states that under an agreement entered into on May 1, 1908, between the Kings Hill Irrigation & Power Company and the State of Idaho, being the agreement referred to in the Cross Bill herein and of record in this cause as Exhibit "3" attached to the complaint in intervention in the State of Idaho heretofore filed herein (to which Exhibit "3" this defen-



dant hereby refers and begs leave to make reference thereto as part of this answer), said defendant, Kings Hill Irrigation & Power Company, agreed that a corporation to be known as Glenns Ferry Canal Company, Limited, should be formed, the authorized stock of which corporation should be 18,000 shares, and that all persons, who, prior to its formation, should have purchased or acquired water rights or shares of water from said Kings Hill Irrigation & Power Company should be entitled to receive and have issued to them shares in such corporation so to be formed, equal in number to the water rights or shares of water then owned and held by such persons; and that it further agreed that the said Glenns Ferry Canal Company, Limited, should have the management, ownership and control of the said irrigation system in said agreement provided for, as fast as the same was completed and turned over to it for operation by the said defendant, Kings Hill Irrigation & Power Company, and that the manner of such turning over should be as follows:

Whenever it should be certified by the Chief Engineer of said defendant, Kings Hill Irrigation & Power Company, and the State Engineer of Idaho that certain portions of the said irrigation works had been so far completed as to permit the operation thereof for delivery of water to purchasers of water rights, the same might, with the consent of the State Land Board, be transferred and delivered over to the said Glenns Ferry Canal Company, Limited, for op-

eration, but that such transfer should not be construed as a final acceptance by said State Land Board of such portion of such canal.

This defendant further states that hereafter this defendant, Glenns Ferry Canal Company, Limited, was formed in accordance with the provisions of said agreement, and the said irrigation system (being the entire system designated in the Cross Bill filed herein) was completed and turned over to this defendant, and that this defendant became and was the owner of said system at a time prior to the 13th day of July, 1909, and has at all times since been the owner thereof, and that at said time there was nothing due to said cross complainant for any materials furnished or work done in the construction of said system.

3. This defendant admits that subsequent to its acquisition of the ownership and control of said irrigation system it permitted the Kings Hill Irrigation & Power Company, a defendant herein, to make certain repairs in said system, which repairs said defendant desired to make in order to induce the said Land Board of the State of Idaho to finally accept the said irrigation system and release the bond given for the faithful performance of the said contract or agreement between said defendant, Kings Hill Irrigation & Power Company, and the said State of Idaho; but this defendant says that all work so done by the said Kings Hill Irrigation & Power Company was in the nature of the repairing of, and not of the construction of, said irrigation system.

This defendant says that it is without knowledge as to whether the cross complainant, Pacific Coast Pipe Company, furnished any materials to said defendant, Kings Hill Irrigation & Power Company, at the place or on the dates set forth in said Cross Bill, or at any other place or on any other dates, and that it is without knowledge as to whether, in case any such materials were furnished, the same were used in the repair of said irrigation system or any part thereof, and that it is without knowledge as to what were the agreed prices and what the reasonable values of the materials, if any, which were furnished, or what the terms were upon which the sales were made, and it further says that it is without knowledge as to whether the dates of invoice and the prices of materials, in case any were furnished, were as set out in the said Cross Bill, and that it is without knowledge as to what amount, if any, became due and owing from said defendant, Kings Hill Irrigation & Power Company, to said cross complainant, and the amount, if any, that was paid the cross complainant by said defendant; but it prays strict proof of each and every of the averments in the Cross Bill relating to said matters.

5. This defendant further says that it is without knowledge as to the dates upon which said cross complainant furnished and ceased to furnish materials (in case it did furnish materials); but this defendant avers that such materials, if any, as were furnished by the cross complainant, were furnished from time to time for repairs upon said irrigation

system, and that at each time when said cross complainant furnished any such materials (if any were so furnished), it filled a separate order for said materials, and as to each order it ceased furnishing materials when the order was shipped.

6. This defendant further says that it is without knowledge as to whether the cross complainant within the time allowed by the laws of the State of Idaho, or otherwise, filed for record in the County Recorder's offices of Elmore and Owyhee Counties, in the State of Idaho, or elsewhere, claims of lien, duly verified or otherwise, and that it is without knowledge as to when or how such claims, in case any were so recorded, were recorded in said counties or elsewhere, and it asks strict proof of all the averments in the Cross Bill regarding said matters; that it states that, if in fact said cross complainant furnished materials at the different times specified in said Cross Bill, then no claim for lien was filed for record within the time allowed by the laws of the State of Idaho after the respective furnishings of materials had ceased, and particularly that no such claim was filed within the time allowed by said laws after the cross complainant had ceased to furnish the materials, if any, which were furnished in the year 1909, and in the winter of the year 1910.

7. This defendant further says that it is without knowledge as to whether the cross complainant herein, on the 31st day of October, 1910, or at any other time, or within the time allowed by the laws of the State of Idaho, or at any other time, com-



menced any action or proceeding in the District Court of the Fourth Judicial District of the State of Idaho, in and for Elmore County, or elsewhere, to enforce its alleged lien, and that it is without knowledge as to what, if any, steps or proceedings were thereafter taken with respect to any such suit or suits, or as a result thereof; but this defendant states that it was and is the owner of said irrigation system, and that such ownership was conferred upon it by the agreement between the State of Idaho and the defendant, Kings Hill Irrigation & Power Company, which agreement is attached to the Bill of Intervention of the State of Idaho heretofore filed herein as Exhibit "3" and in and by the action taken pursuant to said agreement as hereinbefore set forth, and it was on the 31st day of October, A. D. 1910, and for a long time previous thereto had been, such owner of said irrigation system, and was a necessary party to any action or proceeding taken with reference to any lien thereon, but that it never was a party to, and never was served with summons, in any proceeding regarding any such lien.

8. This defendant avers that said cross complainant has not, and had not at any time prior to the filing of the Cross Bill herein, commenced any proceedings to enforce said lien as against this defendant or its interest in the property described in said Cross Bill; and that at the time said Cross Bill was filed, more than two years had expired since the last date when cross complainant claims to have furnished materials, and since the time when cross com-

plainant claims the credit given expired; and that consequently the lien of the cross complainant, if it ever had any lien, has expired and ceased and does not bind any interest of this complainant in said property.

9. This defendant admits the execution of an agreement on May 1, 1908, between Kings Hill Irrigation & Power Company, the defendant herein, and the State of Idaho, and has hereinbefore in this, its answer, made reference to said agreement, and it admits that the works to be constructed and which were constructed by said defendant, Kings Hill Irrigation & Power Company, consisted of a dam or dams, main and subordinate canals and laterals, fluming, trestle work, pipe lines, bridges for supporting pipe lines, headgates, waste gates and other structures as described in the said contract with the State of Idaho, but this defendant denies that the materials, if any, which were sold and delivered by the cross complainant herein to Kings Hill Irrigation & Power Company, a defendant herein, were to be used, or that they were used, in the construction and completion of the canals and works required to be constructed by said agreement, and avers that prior to the furnishing of any such materials, if any such materials were so furnished, said canals and works and irrigation system had been fully constructed.

10. This defendant admits that certain parts of the irrigation works which were so constructed by said defendant, Kings Hill Irrigation & Power Com-

pany, under its said contract with the State of Idaho, were constructed over, along, across and upon public lands of the United States and lands of the State of Idaho, but denies that the same was entirely constructed over such land, and states particularly that the larger part of the lands over, along and across which said irrigation system was constructed (in so far as it was constructed over such public lands and land of the State of Idaho) were lands owned by the State of Idaho and lands to which it had become entitled by virtue of the Act of Congress of the United States, approved August 18, 1894, and commonly known as the Carey Act, and avers that the State of Idaho had granted, and did, by said contract of May 1st, 1908, hereinbefore referred to, grant to said Kings Hill Irrigation & Power Company, a right of way for said canal and irrigation system, and denies that the completion thereof was essential or necessary to securing to said Kings Hill Irrigation & Power Company any of its right of way, but this defendant specifically avers that said Kings Hill Irrigation & Power Company had, in the first instance, acquired, and this defendant had acquired from it, title in and to the entire right of way for said canal and irrigation system prior to the furnishing of any material in said Cross Bill alleged to have been furnished by the cross complainant.

11. This defendant avers that said cross complainant is a corporation organized under the laws of a state other than the State of Idaho, and that it has not at any time filed, with the Secretary of State

or with the County Recorder of any county whatsoever of said state, a copy of its Articles of Incorporation, certified or otherwise; and that it has not, at any time, designated any person in said state upon whom process issued by authority of said state might be served, and that it is accordingly not entitled to any lien whatsoever, for material furnished in, or for use in, said state.

12. This defendant avers that said cross complainant is not entitled to any lien for material, if any, furnished, outside the State of Idaho, to Kings Hill Irrigation & Power Company, a defendant herein, for the reason that the laws of said state do not afford liens on property within it for material furnished, or work performed, outside of its boundaries.

13. This defendant denies all allegations, averments and matters contained in the said Cross Bill, and necessary to be answered by this defendant, which are not above expressly admitted or denied, or stated to be without the knowledge of this defendant; and it asks strict proof of all such matters and also of all matters above stated to be outside the knowledge of this defendant.

14. This defendant denies that the cross complainant is entitled to any of the relief prayed in its said Cross Bill; and this defendant prays the same advantage, as if it had moved to dismiss or demurred, and that it be permitted to avail itself under this answer of all matters of defense which might otherwise be raised by motion to dismiss or by other pleading.



And this defendant accordingly prays to be dismissed with its just costs and charges in this behalf most wrongfully sustained.

GLENNS FERRY CANAL COMPANY, LIMITED.

F. B. EBBERT,

Solicitor for Defendant.

Service of the foregoing answer and receipt of a copy thereof acknowledged this 4th day of Oct., 1913.

N. M. RUICK,

Attorney for Pacific Coast Pipe Company.

(Endorsed): Filed Oct. 4, 1913. A. L. Richardson, Clerk.

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*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee,

Complainant,

vs.

KINGS HILL IRRIGATION & POWER COMPANY, a Corporation, GLENNS FERRY CANAL COMPANY,, LIMITED, a Corporation, PACIFIC COAST PIPE COMPANY, a Corporation, KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED, a Corporation, MINNEAPOLIS STEEL AND MACHINERY COMPANY, a Corporation, and C. R. SHAW,

Defendants,

AND

THE STATE OF IDAHO, on the relation of John M. Haines, Governor, Joseph Peterson, Attorney General, Wilfred L. Gifford, Secretary of State, Grace M. Shepherd, Superintendent of Public Instruction, and Fred Huston, State Auditor, constituting the State Board of Land Commissioners of the State of Idaho, F. E. WILSON ET AL., and CRASTER FARM & ORCHARD COMPANY,  
Interveners.

*Statement of Evidence on Appeal.*

This cause came regularly on to be heard on the 23rd day of October, 1913, before Hon. Frank S. Dietrich, Judge of the above entitled court, O. O. Haga, Esq., and Messrs. Mayer, Meyer, Austrian and Platt (by Mr. Powell) appearing for plaintiff; B. S. Crow, Esq., for intervener, State of Idaho et al.; Wood & Driscoll (by Mr. Driscoll) for Minneapolis Steel & Machinery Co.; T. S. Risser, Esq., for intervener, Craster Farm & Orchard Co.; N. M. Ruick, Esq., for Pacific Coast Pipe Company, defendant and cross complainant.

Whereupon, the following proceedings were had, to-wit:

The complainants offered and introduced in evidence the deposition of William P. Kopf, a witness on behalf of complainant, which deposition was received without object and by agreement of counsel and the permission of the court was considered read.

It was further conceded by counsel for the respective parties that the said deposition established facts

which entitled the complainant to a foreclosure of a mortgage set out in the complaint. (Deposition omitted.)

Mr. Haga (for complainant) : If the Court please, this closes the case of the complainant except the question of attorneys' fees and disbursements by the trustee, which, we think, should properly be determined when the duties of the trustee are nearer their termination than they are at the present time. In other words, when we reach the point of a distribution of the proceeds of a sale, the trustee will then make proof of its disbursements and of attorneys' fees which it has incurred in the prosecution of its trust and the foreclosure of the bill. With that reservation, the case may be closed now.

Mr. Ruick: I think perhaps it would be well to inform the Court briefly as to what the issues are here, so that the testimony will be intelligible. The Colonial Trust & Savings Bank, as Trustee, brings an action to foreclose the mortgage upon what is known as the Kings Hill Irrigation & Power Project. The Pacific Coast Pipe Company, during the progress of the work on this project, furnished certain material in the shape of wood pipe, materials for wood pipe, and this was, as is alleged in the complaint, between July, 1909, and July, 1910. Within ninety days after the material had ceased to be furnished, they filed lien, which lien was subsequently foreclosed by a suit in this court. None of the other parties to this suit were parties defendant in that action. The Kings Hill Irrigation & Power

Company alone was defendant. A decree was entered and the property was sold under the order of this court by Special Master, who made his return, which return was duly approved by the Court and, after the period allowed by the statutes of Idaho for redemption, a deed was issued by the Special Master to the purchaser, the Pacific Coast Pipe Company. The Pacific Coast Pipe Company alleges the same facts in this suit as it did in the former suit against the Kings Hill Irrigation & Power Company. It sets up its lien and asks the Court to decree that this lien is prior to that of the plaintiff and of the other defendants in the action.

The answer of the Continental & Commercial Trust and Savings Bank puts in issue practically each and every of the allegations of the cross complaint. The principal question arises between the Continental & Commercial Trust and Savings Bank, plaintiff in this action, and the Pacific Coast Pipe Company, relative to the priority of their liens.

Counsel in this case have entered into a stipulation respecting depositions which were used in the former case. These depositions are to be considered as taken in this action. This stipulation reads as follows:

“It is hereby stipulated by and between the respective parties hereto that the evidence (all of which was taken by depositions) heretofore taken in the cases of Pacific Coast Pipe Company vs. Kings Hill Irrigation & Power Company, No. 351, the Pacific Coast Pipe Company vs. Kings Hill Irrigation



& Power Company and Slick Brothers Construction Company, Limited, No. 352, or either of them, and now on file and of record in this court, may be introduced and used on the trial hereof, with the same force and effect as if taken in this suit. The parties hereto expressly waive any objection to the competency of the said evidence because of its having been taken in another suit and waive objection to the form of the questions and answers contained therein or the form of certification thereof or of the exhibits attached thereto or because said exhibits are copies instead of originals, but reserve the right to object to the relevancy or materiality of any question or answer or exhibit contained in, or attached to, the evidence in said cases the same as if the witnesses were personally present and were interrogated and examined in open court on the trial of this cause on the same matters covered by the depositions and exhibits, or either of them, and such objections may be made at the time the depositions and exhibits, or either of them, are offered in evidence or read to the court."

Mr. Driscoll (for Minneapolis Steel & Machinery Company): May it please the Court, the issue between the Pacific Coast Pipe Company and the Minneapolis Steel & Machinery Company is a question as to only a small portion of the property claimed under the lien of the Pacific Coast Pipe Company. We claim a lien on a small amount of this property and, as the cross complaint of the Pacific Coast Pipe Company shows, we were not a party to the former

action and we have pleaded the statute of limitations under the mechanics lien law and, inasmuch as practically all the facts necessary for that matter are shown in the cross complaint, it is a matter that could have been raised by demurrer under the old practice and by the answer in this practice and can be disposed of by the court prior to the introduction of evidence and that is the main issue between the Pacific Coast Pipe Company and the Minneapolis Steel & Machinery Company.

Mr. Haga (for complainant): It seems to me, your Honor, that, on the statement of counsel as to when the material was furnished and the proceedings had in the suit brought to foreclose this lien, and that the cross complaint now before the court was not filed until March 25, 1913, no cause of action is stated in the cross bill against any of the parties now before the court and we now object to the introduction of any evidence on the part of the cross complainant, the Pacific Coast Pipe Company, in this suit, for the reason that it appears by the statement of counsel and from the cross bill on file that the suit was not commenced within the time required by the lien laws of this state and particularly under the provisions of Section 5118, Revised Codes, which requires that the suit must be commenced within six months after the lien is filed and, in any event, within two years after the last material was furnished or the last service rendered. It is outlawed under either of these provisions and under both of these provisions. We, therefore, object to

that evidence being introduced in support of the issues raised by the cross bill.

The Court:

“I will say to counsel that this precise question was submitted to me at the last term at Pocatello and quite elaborately argued and it is now under advisement upon written briefs. I have not yet reached any conclusion in that case. \* \* \*”

Mr. Driscoll (for Minneapolis Steel & Machinery Company): I want to make the same objection that Mr. Haga made to the introduction of evidence.

The Minneapolis Steel & Machinery Company, defendants, object to the introduction of any evidence in support of the cross bill of the Pacific Coast Pipe Company as against the Minneapolis Steel & Machinery Company for the reason that the said cross bill discloses on its face that the cross complainant, the Pacific Coast Pipe Company, has no cause of action and that any cause of action which they may have had is barred by Sec. 5118, of part 3, Title 4, Chapter 1, of the Revised Codes of Idaho.

The Court: I shall overrule the objection pro forma without prejudice to its consideration upon the submission of the cause.

It is agreed by counsel that the objections which have been just made shall extend to all the evidence or proof offered by the cross complainant.

The Court: Yes, you may have your exceptions to the rulings. As I say, it is only a tentative ruling,

however. \* \* \* I have overruled the objection, as I say, now pro forma only for the purpose of letting the testimony go in and later passing upon the merits of the objection."

To which ruling of the court, counsel for complainant and for the defendant, Minneapolis Steel & Machinery Company, then and there excepted.

Whereupon, counsel for cross complainant, Pacific Coast Pipe Company, filed in this cause, pursuant to the stipulation theretofore read into the record the depositions of William W. Greenwood, L. A. Harding, L. Murray Grant, Charles A. Paul, Arthur A. Anderson, L. E. Hawley and T. B. Garrison, witnesses called on behalf of plaintiff, taken before J. N. Ivey, a Notary Public in and for the State of Washington, residing at Seattle, in Cause No. 351, in this court, pursuant to stipulation of counsel, the depositions being certified by the Notary Public as of date July 1, 1911.

This deposition was received in evidence without objection and by agreement of counsel, with the consent of the court, the same was considered read. (Deposition annexed to this statement as Exhibit A.)

Counsel for complainant, Pacific Coast Pipe Company, then offered, pursuant to the stipulation hereinbefore referred to, the depositions of Heber Q. Hale, Geo. L. Swendsen, taken before J. L. White, an examiner appointed by this court, and certified by him as of date July 11, 1911, in Cause No. 351, in this court, which depositions were received and by



agreement of counsel and the consent of the court was considered read. (Depositions attached to this statement as Exhibit B.)

Warren G. Swendsen, being called and duly sworn as a witness on behalf of the Pacific Coast Pipe Company, testified as follows:

Mr. Ruick: I will state to the court that I am calling Mr. Swendsen solely on the question as to the identity of the property described in the mortgage sought to be foreclosed in this case with the property described in the cross complaint of the Pacific Coast Pipe Company.

(Witness testifies.) I have resided in Boise since October 1, 1909. I am an engineer and a member of the firm of Swendsen, Swendsen & Pierce. The other Swendsen in the firm is George L. Swendsen, my brother. As an engineer, I had to do with the construction and planning of the irrigation system of the Kings Hill Irrigation & Power Company. I was in the service of that company from April 1, 1908, to about October 1, 1909. I have frequently been over the project and have worked on it.

(Here witness is shown Exhibit A attached to the complaint in this action, being a copy of the mortgage sought to be foreclosed; also the cross complaint of the Pacific Coast Pipe Company, and is asked to read the description of the property contained in each.)

Q. Do these two documents refer to the same irrigation system or a part of the same irrigation system?

A. They do.

(Here witness is shown a map marked "Plaintiff's Exhibit 2A") and says:

The original map from this—this was printed, was prepared in our office. This is a map of the irrigation system referred to in the cross complaint of the Pacific Coast Pipe Company.

We now ask that the copy of the agreement of May 1, 1908, between the Kings Hill Irrigation & Power Company and the State of Idaho under which this project was constructed and which is already in evidence as a part of the deposition taken in a former case may be marked cross complainant, Pacific Coast Pipe Company's, Exhibit 1, which is done without objection except the general objection hereinbefore noted. (Exhibit E, attached to this statement.)

Mr. Ruick: We now offer in evidence the claim of lien of the Pacific Coast Pipe Company against the Kings Hill Irrigation & Power Company upon the irrigation system hereinbefore referred to and set out and described in the cross complaint of the Pacific Coast Pipe Company.

Mr. Powell (for complainant): If the Court please, we wish especially to object to that for the reasons given in the prior objection and it has become more apparent now because of the date of the filing of that instrument.

Mr. Driscoll: The same objection.

Which objection was overruled by the Court. To which ruling, counsel for complainant and defendant Minneapolis Steel & Machinery Company duly objected.

Said document was thereupon admitted in evidence and marked cross complainant, Pacific Coast Pipe Company's, Exhibit No. 2. (Exhibit F, attached to this statement.)

Mr. Ruick: It appears from the endorsement upon this claim of lien that the same was filed for record in the county of Elmore at 12:05 o'clock a. m., on the 14th day of August, 1910, and recorded in Book 18 of Liens at page 401.

It is admitted in open court that a duplicate of this claim of lien was filed in the county of Owyhee on the 5th day of August, 1910, at 9:05 o'clock a. m.

It is also admitted that cross complainant paid the sum of \$4.20 for recording said claim of lien. It is also stipulated in open court that \$750.00 is a reasonable attorney's fee for foreclosure, being the sum allowed by the court in the former suit.

This admission to be subject to the general objection heretofore noted.

Mr. Ruick (for cross complainant): We now offer in evidence Articles of Agreement between the State of Idaho and E. A. Hitchcock, Secretary of the Interior, for the purpose of showing that, on the 30th day of March, 1904, there was segregated from the public domain, at the request and on the appli-

cation of the State of Idaho, the lands over which this canal, or the canal, laterals and branches and other works of the Kings Hill Irrigation & Power Company, were constructed, pursuant to the agreement thereafter entered into with the State of Idaho on May 1, 1908. We desire to show that, as early as the 30th day of March, 1904, the lands over which and upon which the irrigation works constructed by the Kings Hill Irrigation & Power Company, under its contract with the State, were segregated from the public domain, for the purpose of showing that this ditch or canal and these works were constructed upon public lands of the United States, to which, by operation of law, the Kings Hill Irrigation & Power Company could only acquire title by virtue of the completion of its works. It is alleged in the cross complaint that these works were constructed on, over and across public lands of the United States. These Articles of Agreement describe the lands which were withdrawn from public entry or rather were withdrawn from entry as early as nineteen four and they include the lands over which this canal and those works were constructed.

Mr. Haga (for complainant): We cannot stipulate to that, but consent that the document may be introduced in evidence.

Mr. Ruick: This is (Idaho State Desert Land Segregation) List No. 7. The agreement between the State of Idaho and the Kings Hill Irrigation & Power Company recites this particular agreement and also recites the fact that the Kings Hill Irriga-



tion & Power Company is the successor in interest of the Glenns Ferry Land & Irrigation Company, at whose instance the State of Idaho caused these lands to be segregated. The mortgage also identifies these lands as List No. 7 and recites the fact that the Kings Hill Irrigation & Power Company is the successor of the Glenns Ferry Land & Irrigation Company.

Certification waived and the document admitted in evidence (subject to the general objection here noted) and marked cross complainant, Pacific Coast Pipe Company's, Exhibit No. 3. (Exhibit G, attached to this statement.)

Mr. Ruick: We now offer in evidence the following papers in cause No. 351, filed October 31, 1910, in the case of Pacific Coast Pipe Company against the Kings Hill Irrigation & Power Company.

It is stipulated by counsel that the complaint was filed in the District Court of the Fourth Judicial District of the State of Idaho in and for Elmore County and the cause was subsequently, upon application of the defendant, removed in to this court.

Complaint in said cause admitted in evidence and marked Pacific Coast Pipe Company's Exhibit No. 4. (Exhibit H attached to this statement.)

Mr. Ruick (for cross complainant): We now offer in evidence the answer of the Kings Hill Irrigation & Power Company in said cause, filed April 13, 1911.

Which document is admitted in evidence and

marked cross complainant, Pacific Coast Pipe Company's, Exhibit No. 5. (Exhibit I attached to this statement.)

Mr. Ruick: We now offer in evidence the replication of the Pacific Coast Pipe Company to the answer of the Kings Hill Irrigation & Power Company, filed in this court May 29, 1911.

Received without objection (except the general objection heretofore noted) and marked cross complainant, Pacific Coast Pipe Company's, Exhibit No. 6. (Exhibit J attached to this statement.)

Mr. Ruick: We now offer the decree in said cause in this court, filed December 30, 1911.

Received in evidence without objection (except as heretofore noted) and marked cross complainant, Pacific Coast Pipe Company's, Exhibit No. 7. (Exhibit K attached to this statement.)

Mr. Ruick: We next offer in evidence an order of sale issued out of this court in the cause referred to, addressed to R. M. McCracken, Special Master, directing the sale of the premises described in the decree in said cause, together with the return of sale.

Document admitted in evidence without objection (except as heretofore noted), marked cross complainant, Pacific Coast Pipe Company's, Exhibit No. 8 (Exhibit L attached to this statement).

Mr. Ruick: We next offer the order confirming the sale in said cause, filed in this court July 10, 1912.

Document admitted in evidence without objec-

tion (except as heretofore noted) and marked Pacific Coast Pipe Company's Exhibit No. 9 (Exhibit M attached to this statement).

By agreement of counsel, the supplement to the Cross Bill of the Pacific Coast Pipe Company is deemed filed for the purpose of offering at this time the Special Master's deed.

Mr. Powell: With the understanding that we object to the filing of any supplemental bill because it is immaterial and irrelevant, but for the purpose of this offer it may be considered as filed subject to our objection. We do not object to it on any other ground than those of the general objection heretofore made.

Deed received in evidence and marked cross complainant, Pacific Coast Pipe Company's, Exhibit No. 10 (Exhibit N attached to this statement).

George Walker, a witness called and duly sworn on behalf of cross complainant, Pacific Coast Pipe Company, testified as follows: I reside in Elmore County. I had to do with the laying of the pipe on the King Hill townsite land from the South side of the river, across the bridge and two branches on the Elmore County side. Close to six thousand feet of pipe was laid under my direction. I believe the Pacific Coast Pipe Company furnished that pipe. I received the pipe, checked it off and unloaded it.

Mr. Ruick: I now show you certain invoices, being part of Exhibit A attached to a deposition in this cause, which was taken originally in Case No.

351, Pacific Coast Pipe Company vs. Kings Hill Irrigation & Power Company, and ask you if you checked over these invoices for the purpose of ascertaining whether or not the pipe and materials therein charged for or included in these invoices was actually received by the Kings Hill Irrigation & Power Company at Kings Hill?

A. It was. It was checked off and unloaded off the cars by me. I was employed by C. H. Hammett, President of the Kings Hill Irrigation & Power Company. My information at the time was that this pipe was laid by and on behalf of the Kings Hill Irrigation & Power Company. This line of pipe began on the top of the bluff—on the left part—on the South side of the river.

Witness has attention called to map, Exhibit 2A, attached to a deposition in this cause, and continues:

We connected this pipe with one of the laterals of the Kings Hill Irrigation & Power Company. We connected it with what is marked on this map, Kings Hill Branch, with the main system of the Kings Hill Irrigation & Power Company.

Q. At what point relative to where it crossed the river—about how far back from the river?

A. I should say a quarter of a mile, probably half a mile. I would not be positive as to the exact distance. We constructed a ditch to the point where we made this connection. This ditch was brought from a point further back from the river. We put in a headgate and a drop, where we connected with the



main ditch. It might have been an eighth or a quarter of a mile, from the point where we put in the headgate in the Kings Hill branch to the point where the pipe proper began. We put in a twenty-inch pipe and connected it with the canal branch. The pipe was carried across Snake River on a branch. There was about 3500 feet of twenty-inch pipe. There was a 12-inch branch put in which reached through the town and up to a ditch outside of the townsite. Then there was a branch that went in another direction. That emptied into a ditch carrying water to irrigate some of Ben Hammett's land, I believe. The water was taken across the river for the townsite and to irrigate adjacent land to the townsite, as I understood. I know of it having been taken across and used for that purpose while I was there. There was approximately 2700 feet of 12-inch pipe. There invoices accompanying the pipe read to the Kings Hill Irrigation & Power Company—the company that was constructing the main system.

#### CROSS EXAMINATION.

Q. Mr. Driscoll: That pipe was laid in the spring of 1910? There is no other land watered from this pipe except lands on the North side of the river?

#### REDIRECT EXAMINATION.

Mr. Ruick: All the material described in these invoices attached to this deposition, Exhibit . . . ., went into the construction of this pipe line and was placed there either by me or under my immediate direction.

## CROSS EXAMINATION.

Mr. Haga (for complainant): I believe we commenced the building of this pipe line in March, 1910, and finished it toward fall of the same year. So far as I know, the irrigation system of the Kings Hill Irrigation & Power Company, on the South side of the river, had been completed before we commenced to build that pipe line. I wasn't very familiar with it. Water had been served to lands for irrigation purposes during 1909. Branch called the Kings Hill branch, shown on the map, Plaintiff's Exhibit 2A, attached to the deposition. Exhibit . . . . was not in existence when we commenced to build the pipe line and it had been used for irrigation purposes on the South side of the river the year before. We connected with that branch and built what was necessary to get the water to the North side of the river. We didn't have anything to do with putting that branch in condition for irrigation on the South side of the river.

Q. Did the pipe line which you constructed or any of the ditches which you constructed, pass over vacant government land or did they pass over land that was in private ownership?

A. Part of it was privately owned, I think is all. Part of it was Carey Act and part of it desert—desert entries. I don't know of any vacant government land at that time. By Carey Act land I mean land that has been entered under the Carey Act. The land on the South side of the river where we commenced the pipe line was held under entry at the time.

## REDIRECT EXAMINATION.

(Mr. Ruick): I mean the land had been taken up, filed on. Where the ditch started it had been taken up under the Carey Act.

Mr. Haga: The ditch that we made to connect with the Kings Hill Branch was all Carey Act land. The pipe line was on desert land, not Carey Act land. By desert land, I mean land that had been filed upon under the desert act, that it was not vacant, unoccupied public land.

George Walker recalled, testifies as follows:

By Mr. Ruick: In my final settlement with the Kings Hill Irrigation & Power Company I was paid in a check, signed Kings Hill Irrigation & Power Company, by O. O. Haga, Secretary. That was for the work I had done there at Kings Hill.

## CROSS EXAMINATION.

Mr. Haga: I call your attention to a map purporting to be a map of the Kings Hill Irrigation & Power Company and project and call your attention to the structures in Sec. 12 of Township 5 South, Range 10 East. You will notice what purports there to be a syphon marked Syphon No. 6. Is that the syphon to which you referred this morning?

A. It is.

Witness continues: We commenced laying the pipe at the end of that dark line marked Lateral No. 9 and, what we constructed and in which we used the material furnished by cross complainant,

commenced at the end of that dark line marked Lateral No. 9 and extended across the river to the town of King Hill. This map is practically a correct representation of it. I know of no particular in which it is incorrect.

### REDIRECT EXAMINATION.

Mr. Ruick: The water was conducted further than the town of Kings Hill. The line running westward on this map to the town of Kings Hill is a twenty-inch main. At the end of that main there was constructed a wooden flume and ditches down in a southwesterly direction for the irrigation of lands lying there. The twelve-inch main, which is indicated in a street by three very narrow lines and which connects with this lateral, No. 10, irrigates lands known as the Ben Hammett lands outside of the townsite. It was the plan or intention, as announced by the President of the company, to irrigate lands on the upper side of the townsite, but these were not actually irrigated.

Mr. Haga: I now offer in evidence the map to which the witness has referred, as complainant's Exhibit 1 and I ask permission to substitute a copy.

Mr. Ruick: This map purports to have been certified on the 17th day of August, 1911. We have no objection to the use of this map by way of illustration, but, as purporting to represent conditions prevailing at an earlier date than that at the time that our lien attached or at the time the mortgage of the plaintiff in this action was executed, we, of course,



object to it for that reason. As illustrating the project at the time this map was certified, we have no objection to it. We will further say that respecting the marks or facts in pencil on the map, we have no knowledge concerning those.

Mr. Haga: We don't offer those. We don't want them to go in at all. I offer the map particularly for the purpose of showing the location of the structure and where they are and as illustrating the case.

Mr. Driscoll: We make the same objection as Mr. Ruick does and we object to it as irrelevant as to any matters prior to the date it was certified.

Mr. Haga (for complainant): In order that there may be no question about the record, your Honor, I desire to make a motion to strike out all the evidence and testimony and proof offered on behalf of cross complainant for the reason that the cross bill does not state a cause of action and it appears therefrom that the lien which cross complainant seeks to foreclose had expired by its own limitation and under the statute before a Cross Bill was filed and that the suit to foreclose the lien is barred by Sec. 5118 of the Codes of this state, and it further appears that, when the lien was foreclosed as against the Kings Hill Irrigation & Power Company, the mortgage of the trustee, which the trustee is now foreclosing, was of record and the trustee was not made a party in that suit.

Mr. Driscoll (for Minneapolis Steel & Machinery Company): We should like to move to strike out

all the evidence offered on behalf of the cross complainant, Pacific Coast Pipe Company, as against the Minneapolis Steel & Machinery Company as incompetent, irrelevant and immaterial and for the reason that the lien of the Pacific Coast Pipe Company, if any, has expired by reason of the provisions of Sec. 5118 of the Idaho Revised Codes, it appearing on the face of the cross complaint and by the evidence that the lien of the Pacific Coast Pipe Company was filed more than six months prior to the filing of the said cross complaint. In the former action below against the Kings Hill Irrigation & Power Company on that lien, the defendant, the Minneapolis Steel & Machinery Company, was neither a party nor privy and their rights attached prior to the institution of the former action.

The Court: The motion will be denied on the same conditions as the objection to the introduction of any testimony was overruled. To which ruling counsel for complainant and for defendant, Minneapolis Steel & Machinery Company, then and there duly excepted.

(Here cross complainant rests.)

Warren G. Swendsen called as a witness on behalf of complainant in rebuttal and having been duly sworn testified as follows:

(By Mr. Haga.)

Q. Calling your attention to the map which has been introduced in evidence as complainant's Ex-

hibit No. 1, can you state what is known as the Tuana Gulch Syphon, where it is located?

A. I do. It is substantially as shown on this exhibit. The pipe line is marked "Lateral No. 1 in Sec. 14" at what is known as Pump No. 3.

#### CROSS EXAMINATION BY MR. RUICK.

That Lateral No. 1 was intended to serve part of the land or irrigate part of the N $\frac{1}{2}$  of Sec. 14, Township 6 South, Range 12 East—was to serve and irrigate lands in the S $\frac{1}{2}$  of Sec. 11, same township and range.

A. I am under the impression that part of the lands in Sec. 7 are served from that particular line. A part of the S $\frac{1}{2}$  of Sec. 10 I am sure is served from that Lateral No. 1. That is known as the Tuana Pumping Plant and pipe lines leading therefrom—Tuana Gulch Pumping Plant. It has also been designated as Pumping Plant No. 3. It is the lateral at Tuana Gulch. The pumping plant is operated at that point by means of an impulse water wheel which receives its water from the main canal of the Kings Hill Irrigation & Power Company. Some of the pipe was thirty inches in diameter, as I remember. The discharge from the pumping, as I remember, was either sixteen or twelve inch machine-banded or iron-wound wooden stave pipe that was built and delivered by the Pacific Coast Pipe Company from Seattle.

The above and foregoing is a statement of the evidence to be included in the record on appeal in the

said cause to the United States Circuit Court of Appeals for the Ninth Circuit, in accordance with Paragraph (b) of Rule 75 of the Rules of Practice for the Courts of Equity of the United States in force February 1, 1913.

N. M. RUICK,  
Solicitor for Defendant and Cross Complainant, Pacific Coast Pipe Company. Residence, Boise, Idaho.

Dated, Boise, Idaho, June 16, 1914.

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*Exhibit No. 1.*

*In the District Court of the United States for the  
District of Idaho, Southern Division.*

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee,  
Complainant,

vs.

KINGS HILL IRRIGATION & POWER COMPANY, a Corporation, GLENN'S FERRY CANAL COMPANY, LIMITED, a Corporation, PACIFIC COAST PIPE COMPANY, a Corporation, KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED, a Corporation, MINNEAPOLIS STEEL AND MACHINERY COMPANY, a Corporation, and C. R. SHAW,  
Defendants,

and

THE STATE OF IDAHO, on the relation of John M Haines, Governor, Joseph Peterson, Attorney



General, Wilfred L. Gifford, Secretary of State, Grace M. Shepherd, Superintendent of Public Instruction, and Fred Huston, State Auditor, constituting the State Board of Land Commissioners of the State of Idaho, F. E. WILSON, ET AL., and CRASTER FARM AND ORCHARD COMPANY,

Intervenors.

*In Equity. No. 428.*

STIPULATION FOR TAKING DEPOSITIONS  
ON BEHALF OF COMPLAINANT.

It is hereby stipulated and agreed by and between the parties above named, through their respective solicitors, that the depositions of W. P. Kopf, F. H. Jones, and others, of Chicago, Illinois, witnesses on behalf of complainant, shall be taken by and before any Notary Public for Cook County, State of Illinois, whose official character as such Notary Public shall be sufficiently proved by his official seal and the impression thereof affixed to or stamped upon his return to said depositions, and such Notary Public is hereby agreed upon and appointed to take the depositions of said witnesses:

That said depositions shall be taken at the offices of Messrs. Mayer, Meyer, Austrian & Platt, American Trust Building, Chicago, Illinois, on the 12th day of September, 1913, at 2 o'clock P. M. of said day and continuing from time to time thereafter until completed and that the testimony may be writ-

ten down in shorthand by a shorthand reporter, and thereafter typewritten, and after being so typewritten it may be read and corrected by the witness; and said depositions and testimony when taken may be read and used in evidence in said cause on any trial thereof or proceeding therein, subject to the same objections and exceptions as if the witnesses were personally present on the stand, but without objection or exception to the time, place, or manner of taking the same, or to the form of the question, unless noted at the time, or to the form of the certificate of the Notary taking such depositions; and said parties hereby waive any and all objections to such depositions, except as aforesaid, and waive the issuing of any commission herein from said Court, and hereby agree that said depositions shall have the same force and effect as if taken upon commission duly issued herein; and hereby further waive any and all notices and prerequisite forms required by law or rules of court for the taking of depositions;

But the right is hereby reserved to said defendants and interveners, and each and every of them, if not present at the time when the said witnesses, or any of them, are examined on behalf of plaintiff or their depositions taken as aforesaid, upon five days' notice to plaintiff, or its solicitors, of intention so to do, to recall such witnesses for cross-examination, or to otherwise take their deposition, or the depositions of other witnesses bearing upon the matters embraced in the depositions to be taken on behalf of plaintiff, as aforesaid.

That when said depositions have been completed, the said Notary shall attach thereto his certificate and mail the said depositions to A. L. Richardson, Esq., Clerk of the United States District Court, Boise, Idaho.

Dated this 3rd day of September, 1913.

MAYER, MEYER, AUSTRIAN & PLATT,

Residence: Chicago, Illinois,

RICHARDS & HAGA,

Residence: Boise, Idaho,

Solicitors for Complainant.

F. B. EBBERT,

Solicitor for Defendants, Kings Hill Irrigation & Power Company, Kings Hill Extension Irrigation Company, Limited, and Glens Ferry Canal Company, Limited. Residence: Boise, Idaho.

N. M. RUICK,

Solicitors for Defendant, Pacific Coast Pipe Company. Residence: Boise, Idaho.

WOOD & DRISCOLL,

Solicitors for Defendant, Minneapolis Steel and Machinery Company.

BENJAMIN S. CROW,

Solicitors for State of Idaho and F. E. Wilson, et al., Interveners. Residence: Boise, Idaho.

T. S. RISSER,

Solicitor for Craster Farm and Orchard Company, Intervener.

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*In the District Court of the United States for the  
District of Idaho, Southern Division.*

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee,

- Complainant,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation, GLENN'S FERRY CA-  
NAL COMPANY LIMITED, a Corporation, PA-  
CIFIC COAST PIPE COMPANY, a Corporation.  
KINGS HILL EXTENSION IRRIGATION  
COMPANY, LIMITED, a Corporation, MINNE-  
APOLIS STEEL AND MACHINERY COM-  
PANY, a Corporation, and C. R. SHAW,

Defendants,

and

THE STATE OF IDAHO, on the relation of John  
M. Haines, Governor, Joseph Peterson, Attorney  
General, Wilfred L. Gifford, Secretary of State,  
Grace M. Shepherd, Superintendent of Public In-  
struction, and Fred Huston, State Auditor, con-  
stituting the State Board of Land Commission-  
ers of the State of Idaho, F. E. WILSON ET AL.,  
and CRASTER FARM AND ORCHARD COM-  
PANY,

Interveners.

*In Equity. No. 428.*

United States of America,  
Northern District of Illinois,  
Eastern Division,  
State of Illinois,  
County of Cook,—ss.

William P. Kopf, a witness called on behalf of



the complainant herein, and residing at Chicago, Illinois, more than 100 miles from the place where this cause is to be tried, being duly cautioned and sworn to tell the whole truth, and being carefully examined, deposes and says as follows:

*Direct Examination.*

By Mr. Powell, Counsel for Complainant.

Q. Please state your name, age, and place of residence?

A. William P. Kopf; age, 45; 5939 Michigan Avenue, Chicago.

Q. What is your business, Mr. Kopf?

A. Assistant Secretary of the Continental and Commercial Trust and Savings Bank.

Q. How long have you been Assistant Secretary of the Continental and Commercial Trust and Savings Bank?

A. Upwards of 10 years.

Q. Prior to August of 1910 what was the corporate name of the corporation now known as the Continental and Commercial Trust & Savings Bank?

A. The corporate name was The American Trust & Savings Bank.

Q. The Continental and Commercial Trust and Savings Bank is a corporation organized under the laws of the State of Illinois?

A. It is.

Q. You are conversant with the fact that there was a change of name made, along about August 1, 1910?

A. On July 30, 1910, the name of The American Trust & Savings Bank was changed, pursuant to the statutes of Illinois, to Continental and Commercial Trust & Savings Bank.

Q. And since that date the corporation has been known by this latter name, "Continental and Commercial Trust and Savings Bank"?

A. It has.

Q. But it is the same corporation that formerly did business under the name of The American Trust & Savings Bank?

A. It is.

Q. You were Assistant Secretary of The American Trust & Savings Bank back in the years 1908 and 1909, were you not?

A. I was.

Q. And your business as Assistant Secretary has to do with the Trust Department of the Bank?

A. It has.

Q. Do you recall the fact that a trust deed was delivered to The American Trust & Savings Bank by the Kings Hill Irrigation & Power Company along in the latter part of 1908?

A. There was such a trust deed delivered to us, yes.

Q. You have that trust deed in your files?

A. We have.

Q. Will you produce it, and let it be marked Exhibit A?

A. (The witness produced the trust deed mentioned, which was thereupon marked by the Notary as Exhibit A of September 12, 1913.)

Q. Exhibit A that you have produced is the trust deed in question, is it not? Look at it and see (showing same to witness)?

A. It is.

Q. In connection with the acceptance of that trust did you become familiar with the signatures of the officers of the Kings Hill Irrigation & Power Company, Mr. Charles H. Hammett, President, and Mr. Oliver O. Haga, Secretary?

A. I did.

Q. Please examine the instrument, Exhibit A, and tell the court whether the signature that purports to be that of Charles H. Hammett is his signature, as you became acquainted with it and familiar with it?

A. In my opinion the signature of Charles H. Hammett attached to the instrument was written by Charles H. Hammett.

Q. And what do you say as to what purports to be the signature of Oliver O. Haga, attached to it?

A. In my opinion the signature of Oliver O. Haga as Secretary of the Company, attached to the instrument, is the genuine signature of Oliver O. Haga.

Q. Examine the signature, or what purports to be the signature of The American Trust & Savings Bank, executed by E. A. Potter, President, and attested by Frank H. Jones, Secretary, and tell the court whether or not you are familiar with those signatures, and whether they are the genuine signatures of the officers of the bank at that time?

A. I am familiar with the signatures of E. A. Potter and Frank H. Jones, and the signatures appearing on the instrument in behalf of The American Trust & Savings Bank are the signatures of E. A. Potter, President, and Frank H. Jones, Secretary, respectively.

Q. Examine the impression of the seal, or what purports to be the seal of The American Trust & Savings Bank, attached thereto, is that the seal of The American Trust & Savings Bank?

A. It is.

Q. Do you know of your own knowledge that E. A. Potter was President and Frank H. Jones was Secretary of The American Trust & Savings Bank at that date?

A. I do.

Q. They were, were they?

A. They were such officers.



Q. That instrument was received by you some time about the time of the date of the certificate of recording attached thereto, was it?

A. It was, on or about December 8, 1908.

Q. Sometime after that, probably, was it not, Mr. Kopf, before it would reach your files?

A. Yes, some days after that. Yes, sometime after that.

Q. I observe, Mr. Kopf, that the instrument, Exhibit A, seems to bear a stamp and certificate showing its recordation in the office of the Recorder of the County of Twin Falls, State of Idaho. Was that instrument executed in other copies—that is, were there other executed copies of the same instrument furnished, and recorded in other counties?

A. There were six original copies of the instrument executed. One copy was recorded in Twin Falls County, Idaho; another in Owyhee County, Idaho, and another in Lincoln County, Idaho.

Q. Produce the copy that was recorded in Owyhee County, and let it be marked Exhibit B.

(The witness produced the copy mentioned, which was thereupon marked by the Notary as Exhibit B of September 13, 1913.)

Q. Is Exhibit B produced the copy recorded in Owyhee County?

A. It is.

Q. Please produce the copy recorded in Lincoln County, Idaho, and let it be marked Exhibit C.

(The witness thereupon produced the copy mentioned, which was marked by the Notary as Exhibit C of September 12, 1913.)

Q. I asked you a moment ago whether you received that instrument sometime after the date it was recorded. I had reference, in that inquiry, to the time it reached you in its now present recorded form. When, in fact, was it that you accepted the trust, or about what time did you accept the trust?

A. The trust was accepted on November 30, 1908.

Q. And is that the date of the execution of the instrument by The American Trust & Savings Bank?

A. It is.

MR. POWELL: Mr. Ebbert, Exhibits A, B and C, thus produced by the witness, seem to be duplicates, and I would like to inquire at this time if we can do something by which a copy may be substituted, and the originals be retained in the hands of the trustee, as far as you are concerned?

MR. EBBERT: As far as we are concerned.

MR. POWELL: That is agreeable to you?

MR. EBBERT: That is agreeable to me.

MR. POWELL: Q. I observe, Mr. Kopf, that there is attached to Exhibits A, B and C what purports to be a certificate from the Recorder of each of the counties, that the instrument was filed as a

chattel mortgage. That certificate appeared on the instruments as they were finally delivered to you after recordation, did it not?

A. It did.

MR. POWELL: We now offer Exhibit A, together with the certificate of recordation attached thereto, and the certificate of the Recorder of Twin Falls County, Idaho, to the effect that the instrument was filed in the Recorder's office as there shown, and a minute of said instrument, as a mortgage of personal property was made in the record required by law to be kept of chattel mortgages.

I also now offer Exhibit B, together with the certificate of recordation attached thereto and the certificate of the Recorder of Owyhee County, Idaho, to the effect that the instrument was filed in the Recorder's office as there shown, and a minute of said instrument as a mortgage of personal property was made in the record required by law to be kept of chattel mortgages.

I also now offer Exhibit C, together with the certificate of recordation attached thereto and the certificate of the Recorder of Lincoln County, Idaho, to the effect that the instrument was filed in the Recorder's office as there shown, and a minute of said instrument, as a mortgage of personal property was made in the record required by law to be kept of chattel mortgages.

I now offer, to be attached by the Notary and returned as a part of the records, as a part of the tes-

timony being taken, a duplicate copy of Exhibits A, B and C, and ask that the same be marked by the Notary Exhibit D and by him returned and certified to be a true copy of Exhibits A, B and C, and ask permission to retain the possession of Exhibits A, B and C, with the agreement made with counsel that the originals A, B and C, having been marked first by the Notary with their designation, and his name, will be produced by counsel for the complainant, on the hearing, on the demand of any of the parties to the record.

(The said duplicate copy, being a true and complete copy of Exhibits A, B and C, produced by counsel for complainant, was thereupon marked by the Notary as Exhibit D of September 12, 1913, and the same is attached hereto and returned herewith. Copies of the certificates of recordation on Exhibits A and B and C, respectively, are herewith returned, immediately following and attached to said Exhibit D.)

MR. POWELL: Q. Mr. Kopf, after the acceptance by The American Trust & Savings Bank of the trust deed in question, were there bonds certified and delivered, and, if so, how many?

A. The trustee certified and delivered bonds amounting to \$298,500 at par.

Q. Those were delivered on request of the Kings Hill Irrigation & Power Company, were they?

A. They were.



Q. And all in accordance with the terms of the trust deed?

A. Yes sir.

Q. Subsequently, and in the year 1909, was there a supplemental trust deed drawn, between the same parties, the Kings Hill Irrigation & Power Company and The American Trust & Savings Bank?

A. There was.

Q. That instrument likewise was executed in several parts and recorded in the three counties of Twin Falls, Lincoln and Owyhee, was it not?

A. It was.

Q. Produce the three copies that were ultimately delivered to you after they were recorded, and let them be marked Exhibits E, F and G.

(The witness produced the copies mentioned, which were thereupon marked by the Notary as Exhibits E, F and G, respectively, of September 12, 1913.)

Q. Exhibit E which you have produced is the instrument which was recorded in Twin Falls County, is it not?

A. It is.

Q. And Exhibit F is the instrument recorded in what County?

A. Owyhee.

Q. And Exhibit G is the instrument recorded in Lincoln County, Idaho?

A. In Lincoln County, Idaho.

Q. Examine the signatures to these instruments, Exhibits E, F and B and state if you know whether or not you are familiar with the signatures appearing thereon?

A. I am.

Q. As to the signatures of Mr. Charles H. Hammett and Oliver O. Haga, are they their genuine signatures?

A. In my opinion they are.

Q. And as to the signatures of Frank H. Jones and Edwin A. Potter, are those signatures their genuine signatures?

A. They are.

MR. POWELL: We now offer Exhibit E, together with the certificate of the Recorder appearing thereon, which certificate reads as follows:

State of Idaho,

County of Twin Falls,—ss.

I hereby certify that this instrument filed for record at the request of Am. Trust & Savings B'k. at 40 minutes past 4 o'clock P. M., this 23d day of March, A. D. 1909, in my office, and duly recorded in book 7 of mortgages at page 96.

H. T. WEST,

Ex-officio Recorder.

R. H. ROYS, Deputy.

Fees \$12.00 pd.

MR. POWELL: We now offer Exhibit F, together with the certificate of the Recorder appearing thereon, which certificates reads as follows:

State of Idaho,  
County of Owyhee,—ss.

Filed for record this 20th day of March 1909, at 9:30 A. M. at request of The American Trust & Savings Bank and recorded in Book 8 of Mortgages page 26, of the records of said county.

J. S. ST. CLAIR,  
Ex-officio Recorder.

Fees, \$12.00.

MR. POWELL: We now offer Exhibit G, together with the certificate of the Recorder appearing thereon, which certificate reads as follows:

State of Idaho,  
County of Lincoln,—ss.

I hereby certify that this instrument was filed for record at the request of Richards and Haga at 2 o'clock P. M., this 19th day of March, 1909, in my office, and duly recorded in Book 4 of Mortgages at page 391.

HARRY W. ANDERSON,  
Ex-officio Recorder.

Fees, \$12.85. By.....Deputy.

MR. POWELL: And as a part of the offer of Exhibits E, F and G, we offer what purports to be the certificate of D. C. McDougall, Attorney General, endorsed thereon.

(This certificate appears on the last page of the printed copy returned herewith as Exhibit H.)

MR. POWELL: We also offer, as a part of Exhibits A, B and C, what purports to be the certificate of J. J. Guheen, Attorney General, attached thereto.

(This certificate appears upon the printed copy returned herewith as Exhibit D, at the bottom of the next to the last page thereof.)

MR. POWELL: I now request the Notary to return to the witness the Exhibits E, F and G, which have been offered, and substitute and return, as a part of his deposition, a copy thereof, to be marked Exhibit H, with the stipulation on my part in behalf of the complainant, that Exhibits E, F and G will be produced, on the hearing, for the inspection and use of any of the parties to the record. Will that be agreeable to you, Mr. Ebbert, as far as your clients are concerned?

MR. EBBERT: That is satisfactory to me.

(A true and correct copy of said exhibits E, F and G, substituted for said Exhibits, is attached hereto and returned herewith, marked as Exhibit H of September 12, 1913.)

MR. POWELL: Q. Prior to the execution of the supplemental trust deed, which has been marked here as Exhibits E, F and G, had there been any bonds delivered under the original trust deed, certified and delivered by the trustee?

A. There had been delivered bonds to the extent of \$298,500 at par.



Q. After the execution of the supplemental trust deed, what, if you know, became of those bonds which had been issued under the old, original trust deed?

A. The \$298,500 of bonds referred to were surrendered to the trustee together with all the interest coupons originally attached thereto, and such bonds and coupons were canceled and retired.

Q. In connection with the delivery to you of the original trust deed and the supplemental trust deed, and as security for bonds to be issued thereunder, what is the fact as to whether or not settler's contracts in large numbers were delivered to you and left in your possession?

A. There were delivered and assigned to us, pursuant to the terms of the trust deed, water contracts with settlers, which contracts aggregated about \$540,000.

Q. Have you a list of those contracts, showing the names of the makers, and their dates, and so forth?

A. I have.

Q. Will you produce it, and let it be marked Exhibit I?

(The witness produced the list referred to, which was thereupon marked by the Notary as Exhibit I of September 12, 1913.)

Q. This Exhibit I, which you produce, is a list of the contracts referred to?

A. It is.

Q. I observe that the right hand column is a column marked "Deferred payments." Are you able to say at this time whether that is the absolutely correct amount of deferred payments, as they appear at this time on your books?

A. It is correct, within a few hundred dollars.

Q. There may have been some changes on that list from the way it appears now, you say?

A. Yes, resulting from payments made subsequently to the time the list was prepared.

Q. I observe this list purports to be prepared only down to September 17, 1912, by its date at the head, but as you understand the list was checked up down to what date?

A. December 17, 1912.

Q. The settler's contracts in question, with due assignment thereof, are in your possession, as I understand it, then?

A. They are.

Q. You are prepared to produce them here, for inspection of any parties interested, are you?

A. We are.

MR. POWELL: I now offer to produce them, that anybody may cross-examine the witness with reference to them.

(The said list, so produced and identified by the witness, and marked by the Notary as Exhibit I,

was thereupon offered in evidence by counsel for complainant, and it is attached hereto and returned herewith.)

Q. You have the written assignments of the contracts in question, have you not, Mr. Kopf?

A. We have.

Q. Will you produce those written assignments, for inspection, if they are desired?

A. Yes, sir.

MR. POWELL: I now offer to produce the contracts in question, for the inspection of anybody, and announce to counsel that we will produce them on the hearing in court, if desired. Will that be satisfactory, Mr. Ebbert?

MR. EBBERT: That is satisfactory to me.

MR. POWELL: Q. Mr. Kopf, subsequently to the delivery to you of these settler's contracts, and from time to time after the execution of the supplemental trust deed, how many, if any, bonds were certified by the trustee, put out and issued, and turned over to the company?

A. There were certified and delivered bonds amounting to \$358,400 at par.

Q. That is the number of bonds that were certified and delivered so far as the trustee is concerned? That is the number of bonds that are outstanding?

A. Yes, sir.

Q. The trust deed provides for an issuance of \$500,000 of bonds, I believe, but as I understand, then, the number of bonds outstanding is only \$358,400?

A. That is right.

Q. These bonds were made payable at the office of The American Trust & Savings Bank, now Continental and Commercial Trust and Savings Bank, were they not, by their terms?

A. They were.

Q. Can you tell when, if ever, there was any default in the payment of interest on these bonds?

A. The company defaulted in the payment of the installment of six months interest due November 1st, 1911.

Q. Has there ever, so far as your bank is concerned, been any interest paid on these bonds since that date?

A. There has not.

Q. Have you made a computation of the amount that is due, to this date, on those bonds, according to their terms, assuming that the \$358,400 are outstanding?

A. I have.

Q. What is the amount due on the bonds by their terms, computing interest on deferred interest payments at 6%, up to the 12th day of September, 1913?



A. The total amount, including principal, interest, and accrued interest on coupons, is \$412,174.31.

Q. How is that amount made up?

A. Principal of bonds.....\$358,400.00

Interest on the principal of the  
bonds to September 12, 1913,  
at 6% ..... 50,892.79

Accrued interest on interest coupons,  
deferred interest, to September 12, 1913, at 6% ..... 2,881.52

Q. You have made a tabulation of this interest computation, have you not, Mr. Kopf?

A. I have.

Q. Please produce it, and have it marked Exhibit J, and let it be offered in evidence.

(The witness produced the tabulation referred to, which was thereupon marked by the Notary as Exhibit J of September 12, 1913.)

MR. POWELL: We now offer Exhibit J in evidence.

(The said Exhibit J is attached hereto and returned herewith.)

Q. This computation has simply been on the basis of 6% on the deferred interest payments; that is right, is it?

A. It is.

Q. In regard to these bonds, what is the fact as to whether they were all duly certified by the trustee, in the form provided in the trust deed?

A. All of the bonds delivered and outstanding were certified by the trustee in the form provided in the trust deed and in the amendment thereto.

Q. What was the form or language of that certificate endorsed on the bonds? Just tell the Court, if you know.

A. "The within bond is one of the bonds issued under and described in the within mentioned mortgage or deed or trust to the undersigned as trustee, dated November 2, 1908, and certain amendments thereto dated the 1st day of March, A. D. 1909. (Signed) The American Trust & Savings Bank, Trustee, by F. H. Jones, Secretary.

Q. And that certificate was endorsed on all of these bonds that you say were delivered to the order of the company?

A. It was.

Q. Subsequently to the defaulting in the interest, did you receive any notice from bondholders in regard to any action that they desired the bank as trustee to take in this matter?

A. We did.

Q. Was that notice in writing?

A. It was.

Q. Please produce it, and let it be marked Exhibit K.

(The witness produced the notice referred to, which was thereupon marked by the Notary as Exhibit K of September 12, 1913.)

A. It is a notice dated December 13, 1912, signed by William A. Louderback, Albert G. Lester and Joseph E. Otis, committee for Security Holders.

Q. Exhibit K, which you produce, is the instrument in question?

A. It is.

MR. POWELL: We now offer Exhibit K in evidence, and ask that the Notary return a copy thereof, and permit the witness to retain Exhibit K, being an original and part of their files, with the understanding that Exhibit K will be produced on the hearing, for the use of the parties in interest, on demand. Is that agreeable, Mr. Ebbert?

MR. EBBERT: That is agreeable to me.

MR. POWELL: Here is a copy of Exhibit K. Let it be marked Exhibit K-1.

(The said copy was thereupon marked by the Notary as Exhibit K-1 of September 12, 1913, and the same is attached hereto and returned herewith.)

Q. Referring to Exhibit K, Mr. Kopf, I observe this language: "You are hereby directed on account of said defaults and each of them, to declare the principal of all bonds outstanding under and secured by

said trust deed to be due and payable immediately, by notice in writing delivered to the said Kings Hill Irrigation & Power Company." Pursuant to that request did you notify the Kings Hill Irrigation & Power Company?

A. We did.

Q. Have you the acknowledgment from them of that notice, and a copy of the notice that you sent them?

A. We have.

Q. Please produce it.

(The witness produced the paper referred to, and the same was thereupon marked by the Notary as Exhibit L of September 12, 1913.)

Q. This exhibit that you have produced, marked Exhibit L, is an original copy of the notice itself, sent to the Kings Hill Irrigation & Power Company, is it not, or a duplicate copy (indicating)?

A. It is a duplicate of it. There is the notice, the duplicate and the original (indicating).

Q. Calling your attention to the manner in which it is signed, that is the signature of Mr. Jones, is it, attached to the instrument?

A. It is.

Q. I now call your attention to the language on page 5 of this instrument, which purports to be an acknowledgment of the receipt of the notice itself. That came back to you from the Kings Hill Irriga-



tion & Power Company, in the regular course of mail, did it not?

A. It did, and was received by us on December 27, 1912.

MR. POWELL: We now offer Exhibit L, together with the acknowledgment of service thereto attached, on page 5 thereof, being the notice to the Kings Hill Irrigation & Power Company, as identified by the witness, and I ask that the Notary attach a copy, and permit the witness to retain the original as a part of the files of the complainant, with the agreement and understanding that Exhibit L will be produced on the hearing, for the inspection of any of the parties desiring the same, such copy to be marked as Exhibit L-1. Is that agreeable, Mr. Ebbert?

MR. EBBERT: That is agreeable to me.

(A true and correct copy of said Exhibit L, marked as Exhibit L-1 of September 12, 1913, is attached hereto and returned herewith.)

Q. When did you say that came back to you, or was received by you, with the acknowledgment of service?

A. December 27, 1912.

Q. Thereafter you employed counsel to file the bill and institute this foreclosure suit, did you, Mr. Kopf?

A. We did.

Q. What firm of attorneys were employed by you in that connection?

A. Messrs. Mayer, Meyer, Austrian & Platt.

Q. Of Chicago?

A. Of Chicago, Illinois.

Q. And directions were given to them to associate with them associate counsel in Boise, Idaho, were there not?

A. Yes, sir.

Q. And in pursuance to that request and demand of the bondholders this bill for foreclosure was filed?

A. It was.

Q. Referring now to Exhibit K, I see it is recited therein that the parties who signed Exhibit K, this Committee for Security Holders, are the owners and holders of \$281,800, par value, of these bonds, issued under the trust deed in question. What is the fact as to whether or not those bonds were by this committee deposited with you as evidence of their ownership?

A. Such bonds were deposited, and are now in our possession.

Q. What is the aggregate of these bonds that are thus deposited with you at this time?

A. \$281,800.

Q. That is the face value of the bonds?

A. Yes, sir, the par value.

Q. What interest coupons were attached to those bonds, if you know?

A. All of the bonds had interest coupons attached, maturing on and after November 1, 1911, with the exception of \$40,000 of the bonds, which matured May 1, 1911, and had no more interest coupons attached.

Q. There were certain of these bonds, then, that were past due?

A. There were.

Q. That is, the principal on them was past due?

A. Yes, sir.

Q. All the others, though, had the November, 1911, coupons attached?

A. They did.

Q. And those bonds are still in your possession?

A. Yes, sir.

Q. Have you some of them with you?

A. I have three specimens, one of each denomination, a \$100 bond, \$500 bond and \$1,000 bond (producing the same).

Q. The \$100 bond which you have produced bears what number?

A. 581.

Q. The \$500 bond which you have produced bears what number?

A. 469.

Q. And the \$1,000 bond which you have produced bears what number?

A. 211.

Q. The other bonds are of like force and effect, are they, Mr. Kopf?

A. Yes, sir.

Q. They vary in amounts, but they are of the same form as those which you have produced?

A. There are three denominations, varying as to maturities and serial numbers only.

Q. These bonds are in the form as shown in the supplemental trust deed which you have produced?

A. They are.

MR. POWELL: I now offer to produce, and tender for inspection, all of the \$281,800, par value, of the bonds in question, and they are tendered for the inspection of counsel, but we do not feel that they should be introduced here and sent out as a part of this deposition. I will stipulate, however, on behalf of the complainant, that such bonds will be produced at the hearing, if demanded by any of the parties. I trust that will be agreeable to counsel present.

MR. EBBERT: It is satisfactory to me.

MR. POWELL: Q. Now, Mr. Kopf, were there certain payments made to you from time to time on these various settler's contracts? When I say "to you," I mean to the bank.

A. There were.

Q. Have you a list of such payments before you?



A. I have (producing list).

Q. What does such list, as prepared, show? I mean, what in detail do you attempt to show?

A. We attempt to show the collections.

Q. Do you show the numbers of the contracts?

A. We show the maker of the contract, and the number, and the date of payment, and the amount paid, as to principal and interest, as the case may be.

Q. Will you let that instrument be marked as an exhibit, and be offered in evidence? Is that agreeable to you?

A. Yes, sir. It also shows disbursements.

Q. Does the statement as you have it show your disbursements, also?

A. It does.

Q. And shows the balance of cash on hand?

A. Shows the balance of cash on hand as of January 13, 1913, of \$2,776.87, which is also the correct balance on hand at this time.

Q. There has been no variation from that since that time?

A. No, sir.

Q. And is that tabulation a true statement of the receipts and disbursements by the American Trust & Savings Bank, now Continental and Commercial Trust and Savings Bank?

A. It is.

MR. POWELL: Let it be marked Exhibit M, and I offer it in evidence.

(The said list, so produced and identified by the witness, and offered in evidence by counsel for complainant, was thereupon marked as Exhibit M of September 12, 1913, and the same is attached hereto and returned herewith.)

Q. Mr. Kopf, will you prepare and hand to the Notary a list of the bonds by their numbers, as certified and outstanding, and also a list of bonds by their number, which are deposited with you by the Security Holders' Committee, the first list to be known as Exhibit N, and the second list to be known as Exhibit O?

A. Yes, sir.

MR. POWELL: We offer in evidence the said Exhibits N and O.

(The said lists, prepared and furnished to the Notary by the witness, and marked respectively as Exhibits N and O of September 12, 1913, are attached hereto and returned herewith.)

Q. Mr. Kopf, in connection with the supplemental trust deed which has been marked here, produced by you, did you receive from the office of the County Recorder of Owyhee County, State of Idaho, a certificate, showing that that trust deed was filed and recorded and was likewise filed as a chattel mortgage?

A. Yes, sir.

Q. Will you produce the certificate so received?

A. Yes, sir (producing certificate).

(The said certificate, so produced, was thereupon marked by the Notary as Exhibit P of September 12, 1913.)

Q. Exhibit P is the certificate received by you from the Recorder in question?

A. It is.

Q. Did you receive a like certificate from the County Recorder of Twin Falls County, Idaho, in regard to recording the supplemental trust deed out there, and filing it as a chattel mortgage?

A. Yes, sir.

Q. Produce that, please, and let it be marked Exhibit Q.

(The said certificate, so produced, was thereupon marked by the Notary as Exhibit Q of September 12, 1913.)

Q. Exhibit Q is the certificate in question?

A. It is.

Q. Did you receive a similar certificate from the County Recorder of Lincoln County, Idaho, in regard to the recording of the supplemental trust deed in that county, and filing it as a chattel mortgage?

A. Yes, sir.

Q. Will you produce the certificate, please?

A. Yes, sir.

(The said certificate, thereupon produced by the witness, was marked by the Notary as Exhibit R of September 12, 1913.)

Q. Exhibit R, which you produce, is the certificate in question, is it?

A. It is.

MR. POWELL: We offer Exhibits P, Q and R in evidence.

(The said Exhibits P, Q and R are attached hereto and returned herewith.)

Q. As far as you know no suit at law has ever been instituted on any of these bonds?

A. I know of no such suit.

(NO CROSS EXAMINATION.)

WILLIAM P. KOPF.

Subscribed and sworn to before me this 16th day of September, A. D. 1913.

E. A. EULASS,  
Notary Public in and for the County of Cook and  
State of Illinois.

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*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee,  
Complainant,

VS.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation, GLENN'S FERRY  
CANAL COMPANY, LIMITED, a Corporation,  
PACIFIC COAST PIPE COMPANY, a Corpora-  
tion, KINGS HILL EXTENSION IRRIGATION  
COMPANY, LIMITED, a Corporation, MINNE-  
APOLIS STEEL & MACHINERY COMPANY,  
a Corporation, and C. R. SHAW,

Defendants,

AND

THE STATE OF IDAHO, on the relation of John M.  
Haines, Governor, Joseph Peterson, Attorney Gen-  
eral, Wilfred L. Gifford, Secretary of State, Grace  
M. Shepherd, Superintendent of Public Instruc-  
tion, and Fred Huston, State Auditor, constitut-  
ing the State Board of Land Commissioners of the  
State of Idaho, F. E. WILSON, ET AL., and  
CRASTER FARM & ORCHARD COMPANY,

Intervenors.

*In Equity. No. 428.*

In the United States of America,  
Northern District of Illinois,  
Eastern Division,  
State of Illinois,  
County of Cook,—ss.

I hereby certify that on the 12th day of September,

1913, before me, E. A. Eulass, a Notary Public in and for the County of Cook and State of Illinois, at the offices of Messrs. Mayer, Meyer, Austrian & Platt, American Trust Building, in the City of Chicago, County of Cook and State of Illinois, personally appeared, pursuant to the stipulation hereto annexed, at 2:00 o'clock p. m. of September 12, 1913, W. P. Kopf, the witness named in said stipulation, and Charles L. Powell, Esq., of Messrs. Mayer, Meyer, Austrian & Platt, appeared as counsel for complainant, and F. B. Ebbert, Esq., appeared as counsel for Kings Hill Irrigation & Power Company, Glenns Ferry Canal Company, Limited, and Kings Hill Extension Irrigation Company, Limited, defendants, and the said W. P. Kopf being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by the deposition hereto annexed.

And I further certify that the said deposition was then and there reduced to shorthand notes by me, and afterward reduced to typewriting under my supervision, and thereafter subscribed by the witness, and that the same has been retained by me for the purpose of sealing up and directing the same to the Clerk of the Court, as required by law.

And I further certify that the reason why the said deposition was taken was that the said witness resides at Chicago, Illinois, more than one hundred miles from Boise, Idaho, the place where this cause is to be tried.

And I further certify that the several exhibits produced at the taking of said deposition and offered in evidence by counsel for complainant were each and all by me marked with their respective designations, as shown in the foregoing deposition, together with the day of the taking of this deposition, and together with my name, "E. A. Eulass, Notary Public," and each and all of said exhibits were then by the witness turned over to me to be returned as a part of the deposition, or to be copied, in order that copies thereof might be returned as a part of the deposition.

And I further certify that Exhibit D, hereto attached, is a true copy of Exhibits A, B and C, as produced and identified by the witness William P. Kopf, and that Exhibit H is a true copy of Exhibits E, F and G, as produced and identified by the witness William P. Kopf; and I certify that on the page immediately following Exhibit D, as herewith returned, appear true copies of the certificates of recordation and filing, as the same appear upon Exhibits A, B and C, respectively. I further certify that Exhibit I, hereto attached, is the original Exhibit I as produced and identified by the witness William P. Kopf; that Exhibit J, hereto attached, is the original Exhibit J, as produced and identified by the witness William P. Kopf; that Exhibit K-1, hereto attached, is a true copy of Exhibit K, as produced and identified by the witness, William P. Kopf; that Exhibit L-1 is a true copy of Exhibit L, as produced and identified by the witness, William P. Kopf; and that Exhibits M, N, O, P, Q, and R, as returned herewith,

are the original exhibits as produced and identified by the witness, William P. Kopf.

I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of this cause.

I further certify that the fee for taking said deposition, \$24.00, has been paid to me by the complainant, and the same is just and reasonable.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at the City of Chicago, in the County of Cook and State of Illinois, this 16th day of September, A. D. 1913.

E. A. EULASS,

Notary Public in and for the County of Cook and State of Illinois.

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# **List of Water Contracts of Kings Hill Irrigation and Power Company held in Trust by Continental and Commercial Trust and Savings Bank, Trustee under the Trust Deed.**

September 17th, 1912

Contract No.	NAME	DATE	DESCRIPTION	ACRES	Deferred Payments
1	Henry C. Jones	Oct. 12, '08	Lot 2	31.86	\$1863.81
2A	Clyde E. Bott	Oct. 12, '08	NE $\frac{1}{4}$	40.00	2340.00
2B	Clyde E. Bott	Oct. 12, '08	Lot 1	31.42	1838.07
2C	Clyde C. Bott	Oct. 12, '08	SE $\frac{1}{4}$	40.00	2340.00
3	Elmore C. Rowell	Oct. 12, '08	Lot 9	43.96	2285.92
4A	J. Paul Johnston	Oct. 12, '08	NW $\frac{1}{4}$	40.00	2340.00
4B	J. Paul Johnston	Oct. 12, '08	SW $\frac{1}{4}$	40.00	2340.00
5	Wm. H. Riemenschneider	Oct. 12, '08	NW $\frac{1}{4}$	40.00	2080.00
6A	Walter S. Bennisson	Oct. 12, '08	SE $\frac{1}{4}$	40.00	1830.00
6B	Walter S. Bennisson	Oct. 12, '08	SW $\frac{1}{4}$	40.00	1830.00
7A	Alexander B. Montgomery	Oct. 12, '08	NW $\frac{1}{4}$	40.00	2340.00
7B	Alexander B. Montgomery	Oct. 12, '08	NE $\frac{1}{4}$	40.00	2340.00
7C	Alexander B. Montgomery	Oct. 12, '08	NW $\frac{1}{4}$	40.00	2340.00
8	Allen Miller	Oct. 12, '08	NW $\frac{1}{4}$	40.00	2340.00
9	Michael O'Gara	Oct. 12, '08	NE $\frac{1}{4}$	40.00	1340.00
10	Burton W. Reeves	Oct. 12, '08	SE $\frac{1}{4}$	40.00	2340.00
11	Edward T. Barber	Oct. 12, '08	NE $\frac{1}{4}$	40.00	2340.00

vs. Pacific Coast Pipe Co.

Contract No.	NAME	DATE	DESCRIPTION	ACRES	Deferred Payments
12	J. Wilson Evans	12, '08	SE $\frac{1}{4}$	40.00	2340.00
13	James Doughty	12, '08	SW $\frac{1}{4}$	40.00	2340.00
14	Worth R. Barringer	12, '08	SW $\frac{1}{4}$	40.00	2340.00
15A	Duncan McDonald	12, '08	SE $\frac{1}{4}$	40.00	2340.00
15B	Duncan McDonald	12, '08	SW $\frac{1}{4}$	40.00	2340.00
15C	Duncan McDonald	12, '08	SE $\frac{1}{4}$	40.00	2340.00
15D	Duncan McDonald	12, '08	NE $\frac{1}{4}$	40.00	2340.00
16A	Hannah D. Pike	12, '08	SW $\frac{1}{4}$	40.00	2340.00
16B	Hannah D. Pike	12, '08	NW $\frac{1}{4}$	40.00	2340.00
16C	Hannah D. Pike	12, '08	NE $\frac{1}{4}$	40.00	2340.00
17	Harold N. Fletcher	12, '08	NE $\frac{1}{4}$	40.00	2080.00
18	Homer Harrison	12, '08	Lot 3	37.20	2176.20
19	Charles T. Barringer	12, '08	NW $\frac{1}{4}$	40.00	2340.00
20A	George F. Stiehl	12, '08	SW $\frac{1}{4}$	40.00	2340.00
20B	George F. Stiehl	12, '08	SE $\frac{1}{4}$	40.00	2340.00
21	Elizabeth Grant	12, '08	NE $\frac{1}{4}$	40.00	2340.00
22	Leila M. Wells	12, '08	Lot 4	7-6-13	1905.28
23	Bennett H. Houston	12, '08	Lot 1	33.31	1948.63
24	Wilbert E. Hogue	12, '08	SE $\frac{1}{4}$	40.00	2340.00
25	Frank O. Leonard	12, '08	NW $\frac{1}{4}$	40.00	1955.00
27	William D. McMillan	12, '08	NE $\frac{1}{4}$	40.00	2080.00
28	Thomas F. Newton	12, '08	NE $\frac{1}{4}$	40.00	2340.00

29	Fred E. Payton	12, '08	SE $\frac{1}{4}$	SE $\frac{1}{4}$	28-5-10	40.00	2340.00
30	Virginia A. Hanes	12, '08	SE $\frac{1}{4}$	SW $\frac{1}{4}$	18-5-11	40.00	2340.00
31	John W. Fink	12, '08	SE $\frac{1}{4}$	SW $\frac{1}{4}$	7-5-11	40.00	2340.00
32	John M. Yochem	12, '08	SW $\frac{1}{4}$	SE $\frac{1}{4}$	23-5-10	40.00	2340.00
33	H. L. Jones	12, '08	SE $\frac{1}{4}$	SE $\frac{1}{4}$	18-5-11	40.00	2340.00
34	Edward M. Roberts	12, '08	SE $\frac{1}{4}$	NE $\frac{1}{4}$	14-6-11	40.00	2340.00
35	Charles E. Miller	12, '08	SW $\frac{1}{4}$	NW $\frac{1}{4}$	24-5-10	40.00	2340.00
36	Martha M. Bowman	12, '08	NE $\frac{1}{4}$	NW $\frac{1}{4}$	30-5-11	40.00	2104.41
37A	Benjamin W. Davis	12, '08	NE $\frac{1}{4}$	NW $\frac{1}{4}$	18-6-13	40.00	2080.00
37B	Benjamin W. Davis	12, '08	Lot 5		17-6-13	15.80	821.60
37C	Benjamin W. Davis	12, '08	NE $\frac{1}{4}$	SE $\frac{1}{4}$	18-6-13	40.00	1664.00
37D	Benjamin W. Davis	12, '08	Lot 6		18-6-13	16.10	837.20
37E	Benjamin W. Davis	12, '08	Lot 6		18-6-13	46.90	1952.64
38	Arthur W. Bergstrom	12, '08	NW $\frac{1}{4}$	NE $\frac{1}{4}$	26-5-10	40.00	2340.00
39	Herbert T. Wright	12, '08	Lot 4		18-5-11	32.74	1915.29
40	Nellie Burgess	12, '08	Lot 6		17-5-11	43.27	2250.03
41	Laughlin J. Gillis	12, '08	NW $\frac{1}{4}$	NE $\frac{1}{4}$	30-5-11	40.00	2340.00
42A	Charles H. Grout	12, '08	SW $\frac{1}{4}$	NE $\frac{1}{4}$	14-6-11	40.00	2080.00
42B	Charles H. Grout	12, '08	SE $\frac{1}{4}$	NW $\frac{1}{4}$	14-6-11	40.00	2080.00
42C	Charles H. Grout	12, '08	NE $\frac{1}{4}$	SW $\frac{1}{4}$	14-6-11	40.00	2080.00
43A	John M. Whitaker	12, '08	SW $\frac{1}{4}$	SW $\frac{1}{4}$	24-5-10	40.00	1820.00
43B	John M. Whitaker	12, '08	SE $\frac{1}{4}$	SE $\frac{1}{4}$	23-5-10	40.00	2080.00
43C	John M. Whitaker	12, '08	NE $\frac{1}{4}$	SE $\frac{1}{4}$	23-5-10	40.00	2080.00

Contract No.	NAME	DATE	DESCRIPTION	ACRES	Deferred Payments
43D	John M. Whitaker	12, '08	NW $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	2080.00
44A	Laura A. Bradley	12, '08	SE $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	2080.00
44B	Laura A. Bradley	12, '08	SW $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	1404.00
45	Susanne M. Lovelace	12, '08	Lot 1	43.00	2520.76
46	Jay F. Buttles	12, '08	SW $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	2340.00
47	James W. Houston	12, '08	SE $\frac{1}{4}$ NW $\frac{1}{4}$	40.00	2340.00
48	C. E. Culbranson	12, '08	Lot 3	32.30	1889.55
49A	James H. Morehouse	12, '08	NW $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	2340.00
49B	James H. Morehouse	12, '08	SW $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	614.25
49C	James H. Morehouse	12, '08	NE $\frac{1}{4}$ NW $\frac{1}{4}$	40.00	2340.00
49D	James H. Morehouse	12, '08	SE $\frac{1}{4}$ NW $\frac{1}{4}$	40.00	1345.50
50	John H. Hibbard	12, '08	SW $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	2340.00
51A	Ben D. Cable	12, '08	SW $\frac{1}{4}$ NW $\frac{1}{4}$	40.00	2080.00
51B	Ben D. Cable	12, '08	NW $\frac{1}{4}$ NW $\frac{1}{4}$	40.00	2080.00
52	Joel J. Finney	12, '08	NE $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	2340.00
53A	James H. Richards	12, '08	NW $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	2340.00
53B	James H. Richards	12, '08	SW $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	2340.00
53C	James H. Richards	12, '08	NW $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	2340.00
53D	James H. Richards	12, '08	NE $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	2340.00
54	William R. McCarty	12, '08	NW $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	2340.00
55	James W. Henderson	12, '08	NE $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	2340.00
56	Hugo J. Jugel	12, '08	Lot 4	37.87	2215.39



57A	Edward B. Thompson	.....Oct.	12, '08	SW $\frac{1}{4}$	SE $\frac{1}{4}$	29-5-11	40.00	2340.00
57B	Edward B. Thompson	.....Oct.	12, '08	NW $\frac{1}{4}$	NE $\frac{1}{4}$	32-5-11	40.00	2340.00
58A	Curtis F. Pike	.....Oct.	12, '08	NE $\frac{1}{4}$	NE $\frac{1}{4}$	13-6-11	40.00	2340.00
58B	Curtis F. Pike	.....Oct.	12, '08	Lot 8		12-6-11	57.30	3352.05
59	Albert J. Norton	.....Oct.	12, '08	SE $\frac{1}{4}$	SW $\frac{1}{4}$	31-5-11	40.00	2340.00
60	Junius Henderson	.....Oct.	12, '08	SE $\frac{1}{4}$	SE $\frac{1}{4}$	31-5-11	40.00	2340.00
61A	Zebulan Wirt	.....Oct.	12, '08	NW $\frac{1}{4}$	NW $\frac{1}{4}$	17-5-11	40.00	2340.00
61B	Zebulan Wirt	.....Oct.	12, '08	SW $\frac{1}{4}$	NW $\frac{1}{4}$	17-5-11	40.00	2340.00
62A	Arwid R. Wells	.....Oct.	12, '08	SW $\frac{1}{4}$	NW $\frac{1}{4}$	17-5-11	40.00	2080.00
62B	Arwid R. Wells	.....Oct.	12, '08	NW $\frac{1}{4}$	SE $\frac{1}{4}$	32-5-11	40.00	2080.00
63A	Charles L. Joy	.....Oct.	12, '08	NE $\frac{1}{4}$	SW $\frac{1}{4}$	20-6-13	40.00	1345.50
63B	Charles L. Joy	.....Oct.	12, '08	Lot 8		20-6-13	41.29	2415.46
63C	Charles L. Joy	.....Oct.	12, '08	SE $\frac{1}{4}$	NW $\frac{1}{4}$	20-6-13	40.00	2340.00
63D	Charles L. Joy	.....Oct.	12, '08	Lot 4		17-6-13	47.82	2797.47
64	Frederick W. Peet	.....Oct.	12, '08	SE $\frac{1}{4}$	NW $\frac{1}{4}$	27-5-10	40.00	2080.00
65	Albert L. Young	.....Oct.	12, '08	NE $\frac{1}{4}$	SE $\frac{1}{4}$	31-5-11	40.00	2340.00
66	Edward Jensen	.....Oct.	12, '08	Lot 2		5-6-11	42.89	2509.06
67A	Iven A. Poteet	.....Oct.	12, '08	SE $\frac{1}{4}$	NE $\frac{1}{4}$	6-6-11	40.00	2080.00
67B	Iven A. Poteet	.....Oct.	12, '08	SW $\frac{1}{4}$	NE $\frac{1}{4}$	6-6-11	40.00	2080.00
67C	Iven A. Poteet	.....Oct.	12, '08	NE $\frac{1}{4}$	SE $\frac{1}{4}$	6-6-11	40.00	2080.00
67D	Iven A. Poteet	.....Oct.	12, '08	SW $\frac{1}{4}$	NW $\frac{1}{4}$	5-6-11	40.00	2080.00
68	Doran H. Sutphen	.....Oct.	12, '08	Lot 6		12-5-10	50.30	2942.55
69	Louis G. Freeman	.....Oct.	12, '08	Lot 5		6-6-11	37.81	1966.11

Contract No.	NAME	DATE	DESCRIPTION	ACRES	Deferred Payments
70A	Walter F. Morrison	12, '08	Lot 2	6-6-11	2519.01
70B	Walter F. Morrison	12, '08	Lot 3	6-6-11	2517.84
70C	Walter F. Morrison	12, '08	Lot 4	6-6-11	2388.55
70D	Walter F. Morrison	12, '08	SW $\frac{1}{4}$	31-5-11	2340.00
71A	Christian D. Steiner	12, '08	SE $\frac{1}{4}$	31-5-11	2080.00
71B	Christian D. Steiner	12, '08	Lot 2	31-5-11	1930.24
71C	Christian D. Steiner	12, '08	NE $\frac{1}{4}$	31-5-11	2080.00
72	Frank C. Jones	12, '08	SW $\frac{1}{4}$	6-6-11	2340.00
73	Almedus E. Bissett	12, '08	SE $\frac{1}{4}$	8-6-12	2080.00
74	Lawrence Gideon Olson	12, '08	SW $\frac{1}{4}$	9-6-12	2340.00
75	Walter J. Coblantz	12, '08	SE $\frac{1}{4}$	23-5-10	2340.00
76	Lee A. Reynolds	12, '08	NE $\frac{1}{4}$	7-5-11	2260.96
77	Joseph J. Whitaker	12, '08	Lot 6	43.48	2228.72
78A	John C. Sanborn	12, '08	Lot 1	13-5-10	2340.00
78B	John C. Sanborn	12, '08	SE $\frac{1}{4}$	6-6-11	2340.00
79	Henry Huston	12, '08	NE $\frac{1}{4}$	6-6-11	2340.00
80	Andrew R. Huston	12, '08	SW $\frac{1}{4}$	32-5-11	2340.00
81	Ennis W. Kinchelce	12, '08	Lot 2	18-5-11	1989.58
82	Helen S. Hutchinson	12, '08	SW $\frac{1}{4}$	27-5-10	2340.00
83	Frank E. Catlin	12, '08	Lot 3	19-5-11	2018.25
85	Lucius S. Wells	12, '08	Lot 2	8-5-11	1849.63
86	Luther C. Temple	12, '08	Lot 7	7-5-11	861.12
		12, '08	SE $\frac{1}{4}$	29-5-11	2080.00

87	John E. Lynch	.....Oct.	12, '08	SE $\frac{1}{4}$	NW $\frac{1}{4}$	5-6-11	40.00	2080.00
88	Clarence H. Forehand	.....Oct.	12, '08	Lot 7		12-6-11	57.50	3363.75
89	Mrs. Kate Lynch	.....Oct.	12, '08	NE $\frac{1}{4}$		14-6-11	40.00	2340.00
90	Charles Sundlead	.....Oct.	12, '08	SE $\frac{1}{4}$	NE $\frac{1}{4}$	30-5-11	40.00	2340.00
92	Chas. B. Clapp	.....Oct.	12, '08	SW $\frac{1}{4}$	NE $\frac{1}{4}$	5-6-11	40.00	2080.00
93	William H. Paddock	.....Oct.	12, '08	SE $\frac{1}{4}$	SW $\frac{1}{4}$	19-5-11	40.00	2340.00
94	Clinton C. Hutchinson	.....Oct.	12, '08	Lot 6		19-5-11	34.77	2034.04
95	John D. Bowes	.....Oct.	12, '08	NW $\frac{1}{4}$	NE $\frac{1}{4}$	14-6-11	40.00	2340.00
96	Simon C. Parsons	.....Oct.	12, '08	SE $\frac{1}{4}$	NW $\frac{1}{4}$	32-5-11	40.00	2340.00
98	John H. Pellitier	.....Oct.	12, '08	NW $\frac{1}{4}$	SW $\frac{1}{4}$	14-6-11	40.00	2340.00
99	George L. McCarty	.....Oct.	12, '08	SE $\frac{1}{4}$	NE $\frac{1}{4}$	31-5-11	40.00	2340.00
100	Clarence H. Hammette	.....Oct.	12, '08	Lot 5		12-5-10	21.08	1096.16
101A	Chas. W. McCarty	.....Oct.	12, '08	Lot 3		5-6-11	42.97	2513.74
101B	Chas. W. McCarty	.....Oct.	12, '08	Lot 4		5-6-11	43.06	2519.01
102A	Frank Byron Smith	.....Oct.	12, '08	SW $\frac{1}{4}$	NE $\frac{1}{4}$	33-5-10	40.00	2340.00
102B	Frank Byron Smith	.....Oct.	12, '08	SE $\frac{1}{4}$	NE $\frac{1}{4}$	33-5-10	40.00	2340.00
103	Oak Hunter	.....Oct.	12, '08	Lot 1		14-6-11	36.35	2126.47
104	Albert Smith	.....Oct.	12, '08	SW $\frac{1}{4}$	NE $\frac{1}{4}$	30-5-11	40.00	2288.00
105	Reilly Atkinson	.....Oct.	12, '08	Lot 9		7-6-12	38.61	2259.68
106	Frank B. Cross	.....Oct.	12, '08	NE $\frac{1}{4}$	NE $\frac{1}{4}$	23-5-10	40.00	2340.00
107	Josef Mondre	.....Oct.	12, '08	Lot 6		12-6-11	53.10	3106.35
108A	Robert C. Hudelson	.....Oct.	12, '08	Lot 7		8-6-12	49.80	2416.05
108B	Robert C. Hudelson	.....Oct.	12, '08	SW $\frac{1}{4}$	SE $\frac{1}{4}$	8-6-12	40.00	1842.75

Contract No.	NAME	DATE	DESCRIPTION	ACRES	Deferred Payments
109	George R. Barker	12, '08	SW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>	40.00	2340.00
110	Edwin Doust	12, '08	NW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub>	40.00	2340.00
111	Moses W. Taylor	12, '08	NE <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>	40.00	2340.00
112A	Mary Carter Richeson	12, '08	SW <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>	40.00	2340.00
112B	Mary Carter Richeson	12, '08	SE <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>	40.00	2340.00
113	George McCabe	13, '08	Lot 7	47.87	2489.23
114A	Ignatz Weil	13, '08	Lot 8	19.50	1140.75
114B	Ignatz Weil	13, '08	Lot 9	31.25	1828.12
115	S. A. Macanulty	13, '08	Lot 3	35.20	1830.40
116	Charles W. Fuller	13, '08	NW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub>	40.00	2340.00
117	Solomon W. Seemann	13, '08	SW <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>	40.00	2340.00
118	William Weed Catlin	13, '08	NW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>	40.00	2080.00
119	Lewis J. Morrison	13, '08	NE <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>	40.00	2080.00
120A	David H. Bandy	13, '08	NE <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>	40.00	2340.00
120B	David H. Bandy	13, '08	SE <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>	40.00	2340.00
121	Sophie Silwold	13, '08	SW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>	40.00	2340.00
122A	Joseph E. Huber	13, '08	SW <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>	40.00	2340.00
122B	Joseph E. Huber	13, '08	Lot 7	27.92	1633.32
123	William H. Mackelvie	13, '08	Lot 2	25.95	1349.44
124	Charles Buffington	13, '08	Lot 5	34.25	2003.62
125	Alice C. Hutchinson	13, '08	SW <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>	40.00	2340.00
126	Anna J. Ewing	13, '08	NW <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>	40.00	2080.00



127A	John W. Rielly	.....Oct.	13, '08	Lot 1	18-6-12	38.75	1274.00
127B	John W. Rielly	.....Oct.	13, '08	NE $\frac{1}{4}$	NW $\frac{1}{4}$	18-6-12	572.00
128A	Orville C. Sanborn	.....Oct.	13, '08	SW $\frac{1}{4}$	SE $\frac{1}{4}$	7-6-12	2340.00
128B	Orville C. Sanborn	.....Oct.	13, '08	SE $\frac{1}{4}$	SW $\frac{1}{4}$	7-6-12	2340.00
128C	Orville C. Sanborn	.....Oct.	13, '08	Lot 10	7-6-12	47.62	1660.23
128D	Orville C. Sanborn	.....Oct.	13, '08	Lot 6	7-6-12	23.25	1360.12
128E	Orville C. Sanborn	.....Oct.	13, '08	Lot 7	7-6-12	28.37	1659.64
129	Daniel L. Weston	.....Oct.	13, '08	Lot 3	32-5-11	39.55	2313.67
130	Lorenzo S. Ferris	.....Oct.	13, '08	SE $\frac{1}{4}$	NE $\frac{1}{4}$	18-5-11	2340.00
131A	Carl Palm	.....Oct.	13, '08	Lot 2	29-5-11	49.94	2920.32
131B	Carl Palm	.....Oct.	13, '08	NW $\frac{1}{4}$	SW $\frac{1}{4}$	29-5-11	2340.00
132	Anselm C. Haworth	.....Oct.	13, '08	NE $\frac{1}{4}$	NW $\frac{1}{4}$	32-5-11	2340.00
133A	Lola Ressler	.....Oct.	13, '08	Lot 6	29-5-11	26.00	1225.30
133B	Lola Ressler	.....Oct.	13, '08	Lot 8	29-5-11	32.97	1928.74
134	John S. Holaday	.....Oct.	13, '08	Lot 5	33-5-11	46.04	2693.34
135	Rolland H. Hess	.....Oct.	13, '08	NE $\frac{1}{4}$	SE $\frac{1}{4}$	32-5-11	2340.00
136	William H. Holaday	.....Oct.	13, '08	SE $\frac{1}{4}$	SW $\frac{1}{4}$	32-5-11	2080.00
137	James P. Holland	.....Oct.	13, '08	Lot 6	33-5-11	54.43	3184.15
138	James M. Holaday	.....Oct.	13, '08	NW $\frac{1}{4}$	SE $\frac{1}{4}$	31-5-11	2340.00
139	Thomas W. Topping	.....Oct.	13, '08	SW $\frac{1}{4}$	SW $\frac{1}{4}$	32-5-11	2080.00
140	Albert E. Hagler	.....Oct.	13, '08	Lot 5	7-6-13	37.95	1983.39
141	Herman H. Shellenberger	.....Oct.	13, '08	Lot 3	9-6-12	35.52	2077.92

Contract No.	NAME	DATE	DESCRIPTION	ACRES	Deferred Payments
142	Alan P. Senior	Oct. 29, '08	Lots 6 & 7		
			Lot 4	106.24	2876.99
143	Millard A. Gill	Oct. 15, '08	Lot 7	43.40	2538.90
144	Richard E. Thompson	Oct. 17, '08	Lot 3	19.65	1021.79
145	Robert J. Carty	Oct. 21, '08	Lot 1	42.80	2225.60
146	William Manning	Oct. 28, '08	Lot 2	32.90	1924.65
147	Frances C. Sanborn	Nov. 2, '08	Lot 7	23.52	1053.00
149	Jim L. Hammett	Nov. 25, '08	NW $\frac{1}{2}$	80.00	702.00
150	Frederick S. Hodge	Nov. 11, '08	Lot 8	21.81	981.65
152	William L. Condit	Dec. 19, '08	Lot 4	37.63	2201.35
153	Robert C. Michael	Dec. 31, '08	Lot 2	20.38	1192.23
154	J. Gordon Douglass	Jan. 14, '09	Lot 8	52.70	1040.00
155	Eben F. Dudley	Feb. 11, '09	Lot 6	45.86	2384.72
156A	August Van Holderbeke	Feb. 18, '09	Lot 7	59.15	3460.27
156B	August Van Holderbeke	Feb. 18, '09	SW $\frac{1}{4}$	40.00	2340.00
157	John H. Pelletier	Feb. 18, '09	SE $\frac{1}{4}$	40.00	1820.00
158	Charles L. Story	Mar. 24, '09	NE $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	1170.00
159	U. S. Grant Story	Mar. 24, '09	SW $\frac{1}{4}$ NW $\frac{1}{4}$		
			NW $\frac{1}{4}$ SW $\frac{1}{4}$	80.00	4212.00
160	Anna C. Sexton	Mar. 29, '09	Lot 5	45.80	2679.30
161	Hugh J. Miller	Apr. 1, '09	Lot 4	27.25	1594.12
162A	Walter T. Wells	Apr. 3, '09	Lot 9	57.70	1560.00

162B	Walter T. Wells	3, '09	Lot 6		12-6-12	25.51	1040.00
163	Thomas Walsh	2, '09	Lot 3		14-6-11	51.20	2995.20
164	Lloyd E. Williams	30, '09	NW <sup>1</sup> / <sub>4</sub>	NE <sup>1</sup> / <sub>4</sub>	23-5-10	40.00	910.00
165	Anna E. Anthony	30, '09	Lot 8		7-5-11	19.50	1014.00
166	George W. Evans	22, '09	Lot 8		14-5-10	22.19	585.00
167	August Van Holderbeke	24, '09	NE <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	5-6-11	40.00	1170.00
168A	Samuel T. Elliott	11, '09	Lot 2		9-6-11	24.00	1404.00
168B	Samuel T. Elliott	11, '09	Lot 3		9-6-11	21.85	1278.22
168C	Samuel T. Elliott	11, '09	Lot 6		9-6-11	36.45	2132.32
168D	Samuel T. Elliott	11, '09	Lot 7		9-6-11	52.65	3080.02
169	Edward C. Davis	14, '09	SE <sup>1</sup> / <sub>4</sub>	SW <sup>1</sup> / <sub>4</sub>	23-5-10	40.00	1144.00
170	George L. Swendsen	16, '09	NW <sup>1</sup> / <sub>4</sub>	NW <sup>1</sup> / <sub>4</sub>	27-5-10		
171	Earl F. Rounds	18, '09	Lot 9		22-5-10	108.81	2925.00
172	Eugene Brown	27, '09	SE <sup>1</sup> / <sub>4</sub>	SW <sup>1</sup> / <sub>4</sub>	11-6-12	40.00	1144.00
173	Eugene Brown	27, '09	Lot 4		11-6-12	21.73	936.00
174	Eugene Brown	27, '09	Lot 5		11-6-12	21.35	1111.50
175	Eugene Brown	27, '09	Lot 8		11-6-12	50.90	2691.00
176	Eugene Brown	27, '09	NE <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	11-6-12	40.00	2340.00
177	Eugene Brown	27, '09	NE <sup>1</sup> / <sub>4</sub>	SW <sup>1</sup> / <sub>4</sub>	11-6-12	40.00	2340.00
178	Claud G. Brown	27, '09	Lot 6		10-6-12	41.27	2180.29
179	Claud G. Brown	27, '09	Lot 7		10-6-12	58.79	3146.71
	Claud G. Brown	27, '09	SW <sup>1</sup> / <sub>4</sub>	SW <sup>1</sup> / <sub>4</sub>	11-6-12	40.00	1579.50

Contract No.	NAME	DATE	DESCRIPTION	ACRES	Deferred Payments
180	Claud G. Brown .....	Aug. 27, '09	SE $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	2340.00
181	Edward R. Northrop .....	Aug. 17, '09	Lot 3	59.40	3474.90
182	Della Brown .....	Sept. 28, '09	Lot 8	58.45	1755.00
183	Della Brown .....	Sept. 28, '09	NE $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	2340.00
184	Della Brown .....	Sept. 28, '09	SE $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	585.00
185	Della Brown .....	Sept. 28, '09	SW $\frac{1}{4}$ SE $\frac{1}{4}$	40.00	1755.00
187	John T. Norton .....	Nov. 29, '09	NE $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	1170.00
188	Frances C. Sanborn .....	Dec. 1, '09	Lot 4	19.30	585.00
189	Frances C. Sanborn .....	Dec. 1, '09	Lot 5	26.70	585.00



AMOUNT DUE SEPTEMBER 12, 1913, ON  
BONDS AND COUPONS OF KINGS HILL  
IRRIGATION & POWER COMPANY.

DEFAULTED NOV. 1, 1911.

\$358,400 Bonds Outstanding.

*Interest on Principal of Bonds.*

6 months' interest to Nov. 1, 1911.....	\$10,752.00
6 months' interest to May 1, 1912.....	10,752.00
6 months' interest to Nov. 1, 1912.....	10,752.00
6 months' interest to May 1, 1913.....	10,752.00
4 months 12 days' interest to Sept. 12, 1913 .....	7,884.79
	<hr/>
	\$50,892.79

*Accrued Interest on Coupons.*

Int. on \$10,752 from Nov. 1, 1911, to Sept. 12, 1913—1 year, 10 months, 12 days...	\$1204.22
Int. on \$10,752 from May 1, 1912, to Sept. 12, 1913—1 year, 4 months, 12 days....	881.66
Int. on \$10,752 from Nov. 1, 1912, to Sept. 12, 1913—10 months, 12 days.....	559.10
Int. on \$10,752 from May 1, 1913, to Sept. 12, 1913—4 months, 12 days.....	236.54
	<hr/>
	\$2881.52

*Recapitulation.*

Principal of bonds.....	\$358,400.00
Interest on bonds to Sept. 12, 1913, at 6% .....	50,892.79

Accrued interest on coupons to Sept. 12,

1913, at 6% ..... 2,881.52

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\$412,174.31

1 day's interest on \$358,400 ..... \$59.733

1 day's interest on \$ 10,752 ..... 1.792

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TO KINGS HILL IRRIGATION & POWER COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and the maker of a certain deed of trust or mortgage, dated November 2nd, 1908, to The American Trust & Savings Bank (now named Continental and Commercial Trust and Savings Bank), as amended by instrument executed by Kings Hill Irrigation & Power Company under date of March 1st, 1909:

You are hereby notified that the undersigned, as Trustee under the mortgage or deed of trust from Kings Hill Irrigation & Power Company to The American Trust & Savings Bank (now named Continental and Commercial Trust and Savings Bank), as Trustee, as amended by instrument executed by said Kings Hill Irrigation & Power Company under date of March 1st, A. D. 1909, which said original trust deed or mortgage was dated November 2nd, 1908, has received a written notice and request from William J. Louderback, James E. Otis and Albert G. Lester, a Bondholders' Committee, who, as such Bondholders' Committee, claim to be the holders and owners of bonds now outstanding of said Kings Hill

Irrigation & Power Company, of the par value of \$281,800 of the issue of bonds secured by the aforementioned mortgage or deed of trust, as amended by said instrument of date March 1st, 1909, in and by which written notice and request, the said Committee, as the holders and owners of more than one-half of the bonds now outstanding under and secured by said mortgage or deed of trust, have declared the amount of the principal of all of the bonds now outstanding under and secured by said deed of trust, together with all the accrued and unpaid interest thereon, to be immediately due and payable, and have directed the undersigned, as Trustee, forthwith to declare the whole of the principal and interest of all of the bonds outstanding under and secured by said mortgage or deed of trust to be at once due and payable, and to proceed to foreclose the lien of the mortgage or deed of trust upon all of the real estate and personal property of the Kings Hill Irrigation & Power Company, including its irrigation and power system in any court of competent jurisdiction, and to take such other steps as the undersigned may be advised by their counsel as necessary and proper.

And you are further notified that the undersigned, as Trustee, has received a certificate of the Central Trust Company of Illinois, which certificate is deemed by the undersigned, as such Trustee, to be satisfactory, showing that at the time of the making of said request the said William J. Louderback, James E. Otis and Albert G. Lester had on deposit with said Central Trust Company of Illinois bonds

of the said Kings Hill Irrigation & Power Company of the face value of \$281,800, issued under and secured by said mortgage or deed of trust, and that the undersigned, as Trustee, believes the said request in writing and the said certificate to be genuine, and to have been respectively signed by the proper parties.

And you are further notified that the undersigned, as Trustee, as further evidence of the ownership by said William J. Louderback, James E. Otis and Albert G. Lester of said bonds of the face value of \$281,800, has received from said Central Trust Company of Illinois all of said bonds of the aggregate par value of \$281,800, and the same are now on deposit with the undersigned, as Trustee.

And it further appearing to the undersigned, as Trustee, that default has been made in the payment of the principal of such of the bonds secured to be paid by said trust deed, as matured on May 1st, A. D. 1911, and on May 1st, 1912, and in the payment of the installment of interest due and payable November 1st, 1911, and of the interest due and payable May 1st, 1912, and of the interest due and payable November 1st, 1912, on all the bonds secured as aforesaid, and now outstanding, and that such default in the payment of the principal and interest so due and payable has continued thence unremedied and that said defaults have continued for more than ninety (90) days.

NOW THEREFORE, the undersigned, as Trustee, in pursuance of the authority vested in it by the



said mortgage or deed of trust, executed by Kings Hill Irrigation & Power Company, under date of November 2, 1908, as amended by instrument executed by Kings Hill Irrigation & Power Company under date of March 1st, 1909, and in pursuance of the request and direction of the said persons believed by the undersigned to be the holders and owners of bonds secured by the said mortgage or deed of trust to the aggregate face par value of \$281,800, hereby elects to and does hereby declare the whole of the principal and interest of all of said bonds outstanding under and secured by said mortgage or deed of trust, dated November 2nd, 1908, as amended by instrument executed by said Kings Hill Irrigation & Power Company, under date of March 1st, 1909, to be at once due and payable, and hereby declares the whole of the principal and interest of said bonds to be so due and payable pursuant to every right and authority vested in it by the terms of said mortgage or deed of trust so far as the same are now applicable, whether herein enumerated or not.

IN WITNESS of all of which said Continental and Commercial Trust and Savings Bank (formerly named The American Trust & Savings Bank) has caused these presents to be executed by its Secretary thereunto duly authorized and has affixed its corporate seal all on this 20th day of December, 1912.

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK.

By F. H. Harris, its Secretary.  
Boise, Idaho, December . . . ., 1912.

The receipt of the foregoing notice, together with copy thereof, is acknowledged at Boise, Idaho, this . . . . . day of December, 1912.

KINGS HILL IRRIGATION & POWER COMPANY,

By.....

# STATEMENT.

## TRUST DEPARTMENT.

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, TRUSTEE,  
IN ACCOUNT WITH  
KINGS HILL IRRIGATION & POWER CO.

From November 4, 1909, to January 13, 1913.

## *Receipts.*

1909

Nov.	4	By C. D. Steiner, payment due	
		Nov. 1, '09, Cont. 71C.....\$	260.00
	20	Interest on same, due Nov. 1,	
		'09 .....	81.90
		R. W. Thompson, payment on	
		Contract No. 144 .....	123.73
		Interest on same .....	44.23
		Elmore C. Rowell, payment	
		due Nov. 1, '09, Cont. No. 3	285.74
		Interest on same.....	51.46
		Wm. H. Riemenschneider,	
		payment due Nov. 1, '09,	
		Cont. No. 5 .....	260.00

*vs. Pacific Coast Pipe Co.* 221

Interest on same .....	58.50
Walter S. Bennison, payment due Nov. 1, '09, Cont. No. 6A .....	260.00
Interest on same .....	58.50
Walter S. Bennison, payment due Nov. 1, '09, Cont. No. 6B .....	260.00
Interest on same .....	58.50
Michael O. Cara, payment due Nov. 1, '09, Nov. 1, '10, Nov. 1, '11, Nov. 1, '12, on Con- tract No. 9 .....	1,000.00
Harold N. Fletcher, payment due Nov. 1, '09, on Contract No. 17 .....	260.00
Interest on same .....	58.50
Leila M. Wells, payment due Nov. 1, '09, on Contract No. 22 .....	238.15
Interest on same .....	75.02
Frank O. Leonard, payment due Nov. 1, '09, on Contract No. 25 .....	125.00
Benjamin W. Davis, payment due Nov. 1, '09, on Contract No. 37A .....	260.00
Interest on same .....	81.90
Benjamin W. Davis, payment due Nov. 1, '09, on Contract No. 37B .....	102.70

*Continental, Etc., Bank*

Interest on same .....	32.35
Benjamin W. Davis, payment due Nov. 1, '09, on Contract No. 37C .....	208.00
Interest on same .....	65.52
Benjamin W. Davis, payment due Nov. 1, '09, on Contract No. 37D .....	104.65
Interest on same .....	32.96
Benjamin W. Davis, payment due Nov. 1, '09, on Contract No. 37E .....	244.03
Interest on same .....	76.88
Nellie Burgess, payment due Nov. 1, '09, on Contract No. 40 .....	281.26
Interest on same .....	63.30
Chas. H. Grout, payment due Nov. 1, '09, on Contract No. 42A .....	260.00
Interest on same .....	70.20
Chas. H. Grout, payment due Nov. 1, '09, on Contract No. 42B .....	260.00
Interest on same .....	70.20
Chas. H. Grout, payment due Nov. 1, '09, on Contract No. 42C .....	260.00
Interest on same .....	70.20
John M. Whitaker, payment due Nov. 1, '09, on Contract No. 43B .....	260.00



*vs. Pacific Coast Pipe Co.* 223

Interest on same .....	46.80
Arwid R. Wells, payment due Nov. 1, '09, on Contract No. 62A .....	260.00
Interest on same .....	58.50
Arwid R. Wells, payment due Nov. 1, '09, on Contract No. 62B .....	260.00
Interest on same .....	58.50
Frederick W. Peet, payment due Nov. 1, '09, on Contract No. 64 .....	260.00
Ivan A. Poteet, payment due Nov. 1, '09, on Contract No. 67A .....	260.00
Interest on same .....	58.50
Ivan A. Poteet, payment due Nov. 1, '09, on Contract No. 67B .....	260.00
Interest on same .....	58.50
Ivan A. Poteet, payment due Nov. 1, '09, on Contract No. 67C .....	260.00
Interest on same .....	58.50
Ivan A. Poteet, payment due Nov. 1, '09, on Contract No. 67D .....	260.00
Interest on same .....	58.50
Louis G. Freeman, payment due Nov. 1, '09, on Contract No. 69 .....	245.77

*Continental, Etc., Bank*

Interest on same .....	55.28
Christian D. Steiner, payment due Nov. 1, '09, on Contract No. 71A .....	260.00
Interest on same .....	58.50
Christian D. Steiner, payment due Nov. 1, '09, on Contract No. 71B .....	241.28
Almedus E. Bissett, payment due Nov. 1, '09, on Contract No. 73 .....	260.00
Interest on same .....	70.20
Lee A. Reynolds, payment due Nov. 1, '09, on Contract No. 76 .....	282.62
Interest on same .....	63.68
Frank E. Catlin, payment due Nov. 1, '09, on Contract No. 83 .....	231.21
Interest on same .....	52.03
Lucius S. Wells, payment due Nov. 1, '09, on Contract No. 85 .....	107.64
Interest on same .....	24.23
Luther C. Temple, payment due Nov. 1, '09, on Contract No. 86 .....	260.00
Interest on same .....	58.50
Wm. W. Catlin, payment due Nov. 1, '09, on Contract No. 118 .....	260.00

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Interest on same .....	23.40
Sophie Silwold, payment due Nov. 1, '09, on Contract No. 121 .....	260.00
Interest on same .....	58.50
Wm. H. Mackelvie, payt. due Nov. 1, '09, Cont. 123.....	168.63
Interest on same .....	37.95
Anna J. Ewing, payt. due Nov. 1, '09, Cont. 126.....	260.00
Interest on same .....	58.50
Thos. W. Topping, payt. due Nov. 1, '09, Cont. 139.....	260.00
Interest on same .....	58.50
Albert E. Hagler, interest on Contract No. 140.....	77.70
Alan P. Senior, payt. due Nov. 1, '09, Cont. 142.....	359.63
Interest on same .....	113.28
Robt. J. Carty, payt. due Nov. 1, '09, Cont. 145.....	278.20
Interest on same .....	62.60
Elen F. Dudley, payt. due Nov. 1, '09, Cont. 155.....	298.09
Interest on same .....	80.49
John H. Pelletier, payt. due Nov. 1, '09, Cont. 157.....	260.00
Interest on same .....	58.50
Walter T. Wells, payt. due Nov. 1, '09, Cont. 162A...	195.00
Interest on same .....	61.43

Walter T. Wells, payt. due	
Nov. 1, '09, Cont. 162B....	130.00
Interest on same .....	40.95
Lloyd E. Williams, payt. due	
Nov. 1, '09, Cont. 164.....	130.00
Interest on same .....	29.25
Edward C. Davis, payt. due	
Nov. 1, '09, Cont. 169.....	143.00
Interest on same .....	45.04

1910.

Apr. 28	Wm. D. McMillan, payt. due	
	Nov. 1, '09, Cont. 27.....	260.00
	Interest on same .....	46.80
	Martha M. Bowman, payt. due	
	Nov. 1, '09, Cont. 36.....	210.00
	John M. Whitaker, payt. due	
	Nov. 1, '09, Cont. 43A.....	260.00
	Interest on same .....	58.50
	John M. Whitaker, payt. due	
	Nov. 1, '09, Cont. 43C.....	260.00
	Interest on same .....	58.50
	John M. Whitaker, payt. due	
	Nov. 1, '09, Cont. 43D.....	260.00
	Interest on same .....	58.50
	Laura Bradley, payt. due Nov.	
	1, '09, Cont. 44A.....	260.00
	Interest on same .....	81.90
	Laura A. Bradley, payt. due	
	Nov. 1, '09, Cont. 44B.....	175.60
	Interest on same .....	55.28



Joseph J. Whitaker, payt. due Nov. 1, '09, Cont. 77.....	278.59
Interest on same .....	62.69
Clarence Hammett, payt. due Nov. 1, '09, Cont. 100.....	137.02
Interest on same .....	30.83
George McCabe, payt. due Nov. 1, '09, Cont. 113.....	311.16
Interest on same .....	70.01
S. A. Macanulty, payt. due Nov. 1, '09, Cont. 115.....	228.80
Chas. W. Fuller, interest on Contract 116 .....	12.00
Lewis J. Morrison, payt. due Nov. 1, '09, Cont. 119.....	260.00
Interest on same .....	58.50
John W. Rielly, payt. due Nov. 1, '09, Cont. 127A.....	159.25
Interest on same .....	35.83
John W. Reilly, payt. due Nov. 1, '09, Cont. 172B.....	71.50
Interest on same .....	16.09
Wm. H. Holaday, payt. due Nov. 1, '09, Cont. 136.....	260.00
Interest on same .....	46.80
Albert E. Hagler, payt. due Nov. 1, '09, Cont. 140.....	246.68
H. H. Shellenberger, interest on Contract 141 .....	25.00
J. Gordon Douglass, payt. due Nov. 1, '09, Cont. 154.....	130.00
Interest on same .....	40.95

Earl F. Rounds, payt. due	
Nov. 1, '09, Cont. 171.....	143.00
Interest on same .....	25.74

## 1910.

May 5	Chr. D. Steiner, payt. balance	
	due on Contract 71D.....	2,193.75
Oct. 24	Ben D. Cable, payt. due Nov.	
	1, '09, Cont. 51A.....	260.00
	Interest on same .....	81.90
	Ben D. Cable, payt. due Nov.	
	1, '09, Cont. 51B.....	260.00
	Interest on same.....	81.90
	Wm. R. McCarty, interest on	
	Contract 54 .....	40.95
	John E. Lynch, payt. due Nov.	
	1, '09, Cont. 87.....	260.00
	Interest on same .....	81.90
	Chas. B. Clapp, payt. due Nov.	
	1, '09, Cont. 92.....	260.00
	Interest on same .....	81.90
	Albert Smith, payt. due Nov.	
	1, 09, Cont. 104.....	52.00
	Interest on same .....	49.14
	H. H. Shellenberger, on ac-	
	count interest on Contract	
	141 .....	25.00

## 1911.

Aug. 10	Lloyd E. Williams, payt. on	
	Contract 164.....	130.00
	Lola Ressler, payt. on Contract	
	133A .....	350.10

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	John H. Pelletier, payt. on Contract 157.....	260.00
	M. M. Bowman, payt. on Contract 36.....	25.59
	John M. Whitaker, payt. on Contract 43A.....	260.00
	Anna E. Anthony, payt. on Contract 165.....	126.75
Dec. 5	Frank O. Leonard, payt. on Contract 25.....	260.00
	Frank O. Leonard, payt. on account interest on Contract 25.....	120.16
	L. L. Rowell, payt. on account interest on Contract 3.....	2.98

1912.

Jan. 22	J. H. Bennison, payt. on Contract 6A.....	250.00
	J. H. Bennison, payt. on Contract 6B.....	250.00
Nov. 16	Henry Siolwold, payt. due Nov. 1, '10, Cont. 121....	260.00
	Interest on same.....	109.20
Dec. 24	Levin J. Keyes (Whitaker) payment on Contract B43.	260.00
	Levin J. Keyes, on acct. interest due Nov. 1, 1910...	112.09

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\$25,861.50

*Disbursements.*

1909.

Nov 24	To transfer to coupon account to pay coupons due	
	Nov. 1, '09.....	\$10,521.00
	Bank, fee paying coupons due	
	Nov. 1, '09.....	26.30

1910.

May 2	Transfer to coupon account to pay coupons due May 1, '10	10,752.00
	Bank, fee paying coupons due	
	May 1, '10.....	26.88
Oct. 31	Transfer to coupons account on account of interest due	
	Nov. 1, '10.....	1,758.45

1913.

Jan. 13	Balance cash on hand.....	2,776.87
		<hr/>
		\$25,861.50



LIST OF FIRST MORTGAGE SIX PER CENT. BONDS  
OF THE  
KINGS HILL IRRIGATION AND POWER CO.

Certified and Delivered.

DATE	BOND NUMBERS	DENOMINATION	AMOUNT
1909.			
May 5	1 to 27 incl., 151 to 186 incl. 46 to 74 incl., 211 to 246 incl. 91 to 126 incl., 271 to 306 incl. 331 to 355 incl.....\$1,000		\$225,000
	406 to 423 incl., 506 to 514 incl. 431 to 453 incl., 521 to 529 incl. 466 to 477 incl., 581 to 595 incl. 486 to 497 incl., 606 to 620 incl.....	500	42,000
May 12	536 to 562 incl..... 356 to 373 incl..... 631 to 645 incl.....	500 1,000 100	13,500 18,000 1,500
June 9	530 to 533 incl. 563 to 565 incl. 515 to 518 incl.....	500	5,500

*vs. Pacific Coast Pipe Co.*

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DATE	BOND NUMBERS	DENOMINATION	AMOUNT
	247 to 252 incl.		
	325 to 330 incl.		
	374 to 380 incl.	1,000	19,000
July 19	28 to 31 incl., 75, 76, 127 to 130 incl.	1,000	10,000
	478 to 479 incl.	500	1,000
Oct. 13	131 to 133 incl.		
	187 to 194 incl.		
	381 to 384 incl.	1,000	15,000
	646, 647	100	200
Dec. 8	648	100	100
	566, 567	500	1,000
	385 to 388 incl.	1,000	4,000
1910.			
Mar. 17	389, 390	1,000	2,000
	368	500	500
	649	100	100
Total .....			<u>\$358,400</u>
September 12th, 1913.			

LIST OF FIRST MORTGAGE SIX PER CENT.  
BONDS

## OF THE

## KINGS HILL IRRIGATION AND POWER CO.

Deposited with Continental and Commercial Trust and Savings Bank, Trustee, by Security Holders' Committee in connection with foreclosure proceedings:

## \$1,000 BONDS.

Nos. 1 to 31 incl.	Nos. 230 to 233 incl.
Nos. 46 to 61 incl.	Nos. 238 to 246 incl.
Nos. 64 to 76 incl.	Nos. 248 to 249 incl.
Nos. 91 to 92 incl.	Nos. 277 to 306 incl.
Nos. 94 to 104 incl.	Nos. 325
Nos. 107 to 112 incl.	Nos. 330 to 331 incl.
Nos. 115 to 122 incl.	Nos. 333 to 337 incl.
Nos. 127 to 130 incl.	Nos. 348 to 349 incl.
Nos. 151 to 156 incl.	Nos. 350 to 353 incl.
Nos. 163 to 180 incl.	Nos. 355 to 380 incl.
Nos. 186 to 194 incl.	Nos. 383 to 384 incl.
Nos. 211 to 225 incl.	Nos. 389 to 390 incl.

Total in amount of \$1,000 bonds.....\$229,000

## \$500 BONDS.

Nos. 406 to 423 incl.	Nos. 506 to 510 incl.
Nos. 436 to 453 incl.	Nos. 512 to 518 incl.
Nos. 466 to 469 incl.	Nos. 521 to 528 incl.
Nos. 474 to 479 incl.	Nos. 530
Nos. 486 to 494 incl.	Nos. 532 to 533 incl.
Nos 497	Nos. 549 to 565 incl.
	Nos. 568

Total in amount of \$500 bonds.....\$48,500

\$100 BONDS.

Nos. 581 to 589 incl.	Nos. 610 to 611 incl.
Nos. 592 to 594 incl.	Nos. 613 to 618 incl.
Nos. 606 to 608 incl.	Nos. 620
	Nos. 631 to 649 incl.
Total in amount of \$100 bonds.....\$4,300	

Total .....\$281,800

All of the above bonds have interest coupons attached on and after November 1, 1911, except \$40,000 of bonds which matured May 1, 1911, and being bonds numbered as follows:

Nos. 1 to 31 incl. at \$1,000 ea,	\$31,000
Nos. 406 to 423 incl. at 500 ea.,	9,000
	<hr/>
	\$40,000

September 12, 1913.

REQUEST TO FORECLOSE AGAINST KINGS HILL IRRIGATION & POWER COMPANY.

Chicago, Illinois, December 13, 1912.  
TO CONTINENTAL AND COMMERCIAL TRUST AND SAVINGS BANK,

(Formerly named The American Trust and Savings Bank) as Trustee under the first mortgage and deed of trust from the Kings Hill Irrigation & Power Company, dated November 2, 1908.



YOU ARE HEREBY NOTIFIED that the undersigned are the holders of bonds aggregating, at the par value thereof, the sum of *Two hundred eighty-one thousand eight hundred* dollars (\$281,800) of the Kings Hill Irrigation & Power Company, secured by a first mortgage and deed of trust to The American Trust and Savings Bank, Trustee, dated November 2, 1908, as amended by instrument executed by said Kings Hill Irrigation & Power Company, under and by virtue of a certain Security Holders' Agreement, dated October 28, A. D. 1911, a copy of which is hereto attached.

YOU ARE FURTHER NOTIFIED that said Kings Hill Irrigation & Power Company made various defaults in the covenants, promises and agreements in said bonds and trust deed contained, on its part to be kept and performed, including the following defaults:

1. In failing to pay the principal of such of the bonds secured to be paid by said trust deed, as matured May 1, A. D. 1911, and of such said bonds as matured on May 1, A. D. 1912, which defaults have continued until this time, said company being still in default in the payment of the principal of the bonds aforesaid.

2. In failing to deposit with you, as Trustee, moneys sufficient to pay the interest, or any part thereof, which matured November 1, 1911, on May 1, 1912, and on November 1, 1912, on all of the bonds secured as aforesaid and now outstanding, and in

failing to pay such interest the Company being still in default in the payment of such interest.

3. In failing to maintain contracts with you, as Trustee, the face value of the unmatured payments of which are equal to one hundred and fifty per cent. of the par value of the bonds outstanding and secured by the trust deed aforesaid.

4. In other respects failing to comply with the terms, covenants and conditions of said trust deed.

You are hereby directed on account of said defaults and each of them, to declare the principal of all bonds outstanding under and secured by said trust deed to be due and payable immediately, by notice in writing delivered to the said Kings Hill Irrigation & Power Company.

You are also hereby requested because of the defaults aforesaid, and each of them, to commence proceedings for the foreclosure of said trust deed and the bonds secured to be paid thereby in any court of competent jurisdiction, and to take such other steps as you may be advised by your counsel as necessary and proper.

We hereby offer to deposit with you Twenty-five Hundred Dollars (\$2500) in cash, and said bonds as indemnity to you against any costs, expenses and liabilities that may be incurred by you by reason of any steps or proceedings taken by you in pursuance of this request and direction.

WILLIAM J. LOUDERBACK, (Seal)

ALBERT G. LESTER, (Seal)

JOSEPH E. OTIS. (Seal)

KINGS HILL IRRIGATION & POWER  
COMPANY

FIRST MORTGAGE SIX PER CENT. GOLD  
BOND

SECURITY HOLDERS' AGREEMENT.

Dated October 28, 1911.

WESTERN TRUST AND SAVINGS  
BANK DEPOSITARY,  
Chicago, Illinois.

WILLIAM J. LOUDERBACK,  
JOSEPH E. OTIS,  
FRANK M. MURPHY,

Committee.

Address: Care Western Trust and Savings Bank.  
Defrees, Buckingham, Ritter, Campbell and Eaton,  
Chicago,

Counsel.

THIS AGREEMENT, made and entered into this 28th day of October, A. D. 1911, by and between the undersigned (hereinafter sometimes called and designated as "Depositors") as holders of certain of the first mortgage six (6) per cent gold bonds, of Kings Hill Irrigation & Power Company (a Nevada corporation), parties of the first part, and William J. Louderback, Joseph E. Otis and Frank Murphy (hereinafter and sometimes called and designated as the "Committee"), parties of the second part, WITNESSETH:

THAT WHEREAS, the said Kings Hill Irrigation & Power Company, by mortgage or deed of trust,

dated November 2, 1908 (which mortgage or deed of trust was amended by an indenture dated March 1, 1909), conveyed to The American Trust and Savings Bank (now Continental and Commercial Trust and Savings Bank), as Trustee, all of the irrigation system of the Irrigation Company, and the other property therein described and conveyed, and

WHEREAS, said mortgage or deed of trust as amended, was so executed and delivered by said Kings Hill Irrigation & Power Company, for the purpose of securing the payment of an authorized issue of \$500,000 of its first mortgage six (6) per cent. gold bonds, each dated the 2d day of November, A. D. 1908, maturing serially on the first day of May of each of the years 1911, to 1917, inclusive, and bearing interest at the rate of six (6) per cent. per annum, payable semi-annually on the first day of May and November, in each year, such interest being evidenced by interest coupons attached to said bonds; and

WHEREAS, there have been executed by said Kings Hill Irrigation & Power Company, certified by said Trustee, delivered to said Kings Hill Irrigation & Power Company, and thereafter negotiated and delivered by it, and there are now outstanding, of the authorized issue aforesaid, bonds, the principal sums of which aggregate \$358,400; and

WHEREAS, said Kings Hill Irrigation & Power Company has made, and is making, or about to make, default in the terms and provisions of its bonds, in-



terest coupons, and mortgage or deed of trust in that it has not paid \$40,000 par value of its bonds, which were due May 1, 1911, and are now outstanding and unpaid, in that it is not prepared to pay the interest coupons attached to the unmatured bonds and due November 1, 1911, and in that it has not performed and is not performing certain other obligations under said mortgage or deed of trust; and

WHEREAS, the undersigned holders of certain of the bonds aforesaid, secured to be paid by said mortgage or deed of trust, deem it proper and wise in view of the circumstances and premises aforesaid that steps should be taken to protect the interests of the undersigned, and wish to provide for a committee to represent them in the premises, and advise and direct the said Trustee from time to time;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES and of the advantages which will accrue from a unity of interests and concert of action, the depositors have agreed and hereby do agree to and with each other, and with the Committee, as follows:

FIRST: William J. Louderback, Joseph E. Otis and Frank Murphy and their respective associates and successors hereunder, are hereby made and appointed a committee to act for such of the holders of said bonds as shall sign this instrument or a duplicate thereof, and deposit their bonds hereunder.

SECOND: Any holder of any of the first mortgage bonds aforesaid of said Kings Hill Irrigation

& Power Company may become a party to this agreement, as depositor, by subscribing his name hereto and writing opposite the same his postoffice address and the number of bonds owned by him, and by depositing, in negotiable form under the terms of this agreement, within such period as the Committee may, from time to time, limit for that purpose, with Western Trust and Savings Bank, hereinafter referred to as the Depositary, all of the first mortgage bonds aforesaid held by him, together with the coupons due November 1, 1911, and all subsequently maturing coupons.

This agreement shall become effective and binding as soon as the holders of a majority in amount of such of the bonds aforesaid as are outstanding shall have become parties hereto and deposited their bonds as hereinabove provided; Provided that in case the holders of not less than twenty-five (25) per cent in amount of such bonds shall become parties hereto, the Committee may, at its election, evidenced by a writing signed by a majority of its members and filed with the Depositary, declare this agreement effective, in which event it shall forthwith become and be effective and binding. After the 10th day of November, 1911, which date is agreed upon as the original limit for deposits hereunder, the Committee may in its own absolute descretion, permit or refuse to permit other bondholders to become parties hereto.

THIRD: Upon the return of this agreement, executed by any depositor, and the deposit of his bonds,

as hereinbefore provided, the Depositary shall issue to such depositor a transferable receipt or certificate for the bonds and coupons deposited, which receipt or certificate shall be in a form satisfactory to the Committee.

All such receipts and certificates of deposit shall be subject in all respects to this agreement, and the interests of the depositors therein shall be transferable only in such manner as the Depositary shall approve and after the payment of all the obligations hereunder of the party making such transfer. The acceptance of any transfer shall bind each and every transferee in all respects as if he were an original party to this agreement.

Neither the Committee, nor the Depositary shall be under any obligation whatever to recognize any but the registered holders as the owner or owners of, or entitled to any interest in or under, any of the receipts or certificates so, as aforesaid, to be issued by the Depositary.

FOURTH: In the event any receipt or certificate issued hereunder shall be or become mutilated, lost or destroyed, the Depositary in its discretion may cause to be executed, and delivered to the registered owner of such mutilated, lost or destroyed receipt or certificate, a new receipt or certificate of like tenor and effect, bearing the same serial number or numbers and date, in place of and substitution for such mutilated, lost or destroyed receipt or certificate; but the Depositary shall not be required to execute and deliver any such new receipt or certificate,

except upon the presentation of evidence satisfactory to it of the mutilation, loss or destruction of the original or originals of such receipt or certificate, and upon presentation of indemnity in the premises satisfactory to the Depositary. If such receipt or certificate shall have been mutilated, but-not effectually destroyed, such mutilated receipt or certificate shall in that event be surrendered to the Depositary and cancelled as a condition precedent to the issue of a new receipt or certificate in place thereof, and every such duplicate receipt or certificate shall, before delivery thereof, have endorsed upon the face thereof a statement to the effect that the same is a duplicate receipt or certificate and is issued in place and lieu of the original thereof, alleged to have been mutilated, lost or destroyed.

FIFTH: The absolute title, legal and equitable, to all bonds and coupons deposited hereunder, is hereby transferred to and vested in the Committee, and its successors for the purposes hereof, and the Depositary shall deliver said bonds to or upon the written order or orders of the Committee; but the beneficial interest in the net proceeds only thereof (whether new bonds or other obligations, or shares of the capital stock of said Kings Hill Irrigation & Power Company, or the bonds, obligations or shares of the capital stock of any other or new company, or otherwise) shall follow and belong (but subject to the provisions hereof) to the holders from time to time, of the receipts or certificates aforesaid, in proportion to the bonds and coupons represented thereby.



The interest of each depositor hereunder is personally and only in the event of the death of any depositor his rights and interest hereunder shall pass to and vest in his executors or administrators and not in his heirs at law.

SIXTH: The Committee is hereby expressly authorized to exercise all the rights and privileges attendant upon the ownership of all bonds deposited hereunder, and, without in any way limiting its right to exercise any other such rights and privileges, it is expressly agreed that the Committee may act as the absolute owner of said bonds in performing each and every of the following acts:

(a) Attend and vote such bonds at any and all meetings of the bondholders of said Irrigation Company; (b) take and institute, or cause to be taken and instituted, any action or proceeding, legal or otherwise, which it may deem proper; (c) execute or cause to be executed any papers, give directions and make requests to said Trustee, or its solicitors, or to any receiver who may be appointed of said Irrigation Company, or to his attorney, or solicitor, or to any person; (d) demand, collect and receive all amounts, in property or money, which may be due or owing upon or in respect to the deposited bonds, whether for principal or interest or both, or otherwise; (e) consent to the issue of receiver's certificates having liens prior or subsequent to the lien of said bonds and said mortgage or deed of trust, or to the issue of other securities having such prior or subsequent lien; (f) extend the maturities of any

bonds or coupons deposited with them hereunder, and exchange such bonds and coupons for other securities; (g) elect that the bonds secured by said mortgage or deed of trust shall become, and execute a declaration that the same shall be, due and payable, forthwith, or at any other time; and deliver notice of any such declaration to the Irrigation Company and the Trustee, and withdraw and revoke any such election and declaration; (h) execute and deliver to the Trustee a request to declare the bonds secured by said mortgage or deed of trust due and payable, or to prosecute proceedings to foreclose said bonds and mortgage or deed of trust, and secure the appointment of a receiver, or to take any other action as such Trustee, and revoke and withdraw any such request or direction; (i) compromise, release or settle any or all of the claims or rights of the depositors hereunder; (j) obtain, provide and assure to the Trustee, or to any other person, out of the securities or other property held by them, or otherwise, indemnity for any expenses, obligations or liabilities, incurred by it or him in pursuance of any request of the Committee, or of any of the holders of said first mortgage bonds.

The Committee is further authorized to purchase, or cause to be purchased, in its behalf, or for its account, either before or after the adoption and approval of any plan or agreement of re-organization or re-adjustment, the property, or any part thereof, conveyed, assigned, transferred, pledged or held in trust (wholly or partly) to secure the payment of

the said bonds, or upon which said bonds, directly or indirectly, constitute a lien, whether such sale be in pursuance of the mortgage or deed of trust aforesaid, or subject to the lien thereof, or otherwise. Either prior or subsequent to such purchase the Committee is authorized to manage and operate, improve and repair, or provide for the management, operation, improvement or repairing of the property aforesaid or any part thereof; and it is further authorized to aid in the performance, with respect to said property, by said Kings Hill Irrigation & Power Company, or otherwise, of any contract or contracts with the United States or the State of Idaho, or any other public authority or private corporation or any person.

In case of any such purchase the Committee may use the deposited first mortgage gold bonds in payment (in whole or in part) of the purchase price, and may borrow money to aid in such purchase, upon security as hereinafter provided, or otherwise. The Committee may treat any property so obtained in all respects as it is authorized to treat the bonds deposited hereunder and may, in its absolute discretion, conduct or intervene in any proceeding affecting any such property.

In the event of a sale of the property securing the payment of the bonds aforesaid, and in the further event that the proceeds thereof shall not be sufficient to pay the entire amount, principal and interest, of all the bonds secured by the trust agreement aforesaid, the Committee is authorized to take such

action as in its sole judgment may be advisable for the recovery of any deficiency due on such bonds and interest, and, for that purpose, to attach and sell any property still owned by said Kings Hill Irrigation & Power Company.

SEVENTH: By signing this agreement, the Depositors, and each of them, agree with the Committee and with each other that they will at all times, and from time to time, promptly when and as called for by the Committee, pay to the Committee, or such person or bank as may be nominated in the call therefor, their pro-rata share of any sums which may be called for by the Committee for disbursement by it pursuant to the purposes contemplated by this agreement, including reimbursement to the Committee for all sums advanced by it or any of its members, or borrowed by it, for such disbursement; and further, that they will indemnify and save harmless the said Committee from all loss or liability for acts done and liabilities assumed pursuant to said purposes.

It is further expressly agreed that no default of any depositor shall release any other depositor from any of his obligations hereunder, and further that the Committee may in its discretion forfeit the rights of any depositor so in default, including the bonds deposited by him, and all moneys paid by him hereunder, or may take any action, legal or equitable, to compel such depositor to perform his obligations hereunder or to obtain damages for his failure to perform such obligations.



EIGHTH: In the event any depositor shall make default in any of his agreements herein, and any such default shall continue for thirty (30) days after the mailing to such depositor of any call or notice, then the Committee may (in addition to the remedy aforesaid) proceed to sell at public or private sale, all or any part of the interest of such depositor in the bonds so deposited and moneys paid by him and in the property given to secure the payment of such bonds, and to apply the proceeds of any such sale, first, to the payment of the expenses (including attorneys' fees) thereof, and then to the payment of the amount of the default of such depositor, and if there be any surplus of such proceeds the same shall be paid to such depositor. No notice of any such sale need be given to the depositor in default, but in the discretion of the Committee notice of such sale may be given by it, provided and on condition that the depositor shall have previously filed his postoffice address in writing with the Depositary.

NINTH: In the execution of each and several the rights, privileges, powers, and discretions hereby and herein conferred upon it, the members of the Committee shall exercise their own discretion and judgment, and the Depositors shall not, nor shall any one claiming by, through or under them, have any right to in any way govern or direct or interfere with the exercise of the Committee of any such rights, privileges, powers, or discretions.

TENTH: If, during the continuance hereof, any question shall arise, of policy or otherwise, which

the Committee may in its own absolute discretion, desire to submit to the Depositors, it may do so by calling a meeting of the holders of receipts or certificates issued hereunder, and the vote at any such meeting of a majority in interest of those present or represented by written proxy at such meeting shall, at the election of the Committee, but not otherwise, be binding upon all the Depositors and constitute and be full and complete authority to the Committee. No receipt-holder or depositor shall be entitled to any notice unless or until he shall have filed with the Depositary, prior to the original mailing of such notice, his full street address in writing.

ELEVENTH: All property purchased or acquired by or on behalf of, or deposited with or for the Committee, under the authority conferred by any of the provisions of this agreement, as well as the first mortgage gold bonds deposited under the terms hereof, and the obligations of Depositors hereunder, shall be charged with the payment of reasonable compensation to the Depositary and to the members of the Committee for services rendered, and expenses and obligations incurred hereunder, including as part of the expenses of the Committee, wherever such expenses are referred to in this agreement, all counsel fees, indebtedness, obligations and liabilities incurred by them, or any of them, in connection with this agreement, or any of the matters contemplated hereby, and including also the expense of the preparation of this agreement, and the maintenance of, and repairs and improvements upon any property in

which the Depositors, as such, are or shall be directly or indirectly interested; also all expenses and counsel fees incurred by said Continental and Commercial Trust and Savings Bank, Trustee, in connection with any foreclosure proceedings or otherwise, and by any receiver appointed in any such proceedings.

TWELFTH: The Committee shall have power, if and whenever in its sole judgment it shall become desirable, to prepare and adopt a plan or agreement for the reorganization and readjustment of the affairs of said Kings Hill Irrigation & Power Company, or for the creation of a new corporation for the purpose of taking over the property, or any part thereof, heretofore owned by said Company, or for such other readjustment of the affairs of said Kings Hill Irrigation & Power Company, as the Committee in its absolute Discretion shall determine; or it may approve any plan or agreement for such reorganization and readjustment, although not prepared by it. Such plan or agreement may be prepared or approved by the Committee and deposited by it with the Depositary either with or without the institution of any suit to foreclose the mortgage and deed of trust aforesaid, or before or after the sale of any of the property upon which said mortgage or deed of trust constitutes a lien, and may provide for the sale of the bonds deposited as aforesaid, or for the resale (for cash or on credit, or for property) of any property purchased by or acquired on behalf of the Committee, and the Committee is given full power

and authority to also provide, in its sole discretion, but not otherwise, for the recognition of the interests of all, or any number less than all, of the stockholders of said Kings Hill Irrigation & Power Company, or of its general creditors or other creditors having claims inferior or superior to those of the holders of its first mortgage bonds.

In pursuance of any such plan of reorganization or readjustment, the Committee may provide for the sale or distribution of any property, or stock, bonds, or other securities, which may come to its hands, of any corporation now existing or hereafter created, and may also provide for the appointment of directors, officers and managers to take charge of and conduct such reorganization or new company for such period as shall to the Committee seem necessary, and may cause themselves to be elected such officers and directors, officers and manager for their services, and for all expenses, obligations or liabilities incurred by them in connection therewith.

THIRTEENTH: Upon the adoption of any such plan of reorganization by the Committee, a copy thereof shall be filed with the Depositary, and thereupon a brief notice of the fact of such adoption and filing shall be prepared and mailed by the Committee to each of the Depositors, addressed to them at the addresses which they shall have written opposite their respective names in the execution of this agreement, or shall have thereafter, and prior to such mailing, given in writing to the Depositary; and the mailing of such notice shall be deemed to be, and shall be,



sufficient and conclusive notice to all depositors, as of the date of such mailing, of the preparation or approval and adoption of such plan or agreement by the Committee and of the filing of a copy thereof with the Depositary. Any depositor hereunder may, within thirty (30) days after the mailing of such notice, file with the Depositary notice in writing that such depositor dissents from such plan or agreement and specifying the reasons therefor. If, within such period of thirty days from the mailing of such notice, depositors entitled to not less than forty (40) per cent in amount of the deposited first mortgage gold bonds shall so file notice of dissent to any such plan or agreement so prepared and approved or adopted by the Committee, such plan or agreement shall not become effective, and the Committee may thereafter, from time to time, prepare or approve and adopt other plan or plans and give notice thereof as aforesaid. If such dissent by such holders of at least forty per cent in amount of the deposited first mortgage gold bonds shall not have been filed within the period and in the manner hereinbefore provided, such plan or agreement shall be binding on all the Depositors, their heirs, executors, administrators, successors, and assigns, all of whom shall be conclusively and finally deemed, for all purposes, to have assented thereto, whether they receive actual notice thereof or not, and shall be irrevocably bound and concluded by the same.

Thereupon the Committee shall be fully authorized to carry out such plan or agreement, and shall have

full power and authority to use, transfer or deliver, under or in accordance with such plan or agreement the deposited bonds and coupons, and all or any part of the property purchased or acquired by or on behalf of, or deposited with the Committee, as fully as though such plan or agreement was and had been expressly assented to by all the Depositors. The interest of the Depositors shall be such only as may be conferred by such plan or agreement, and shall be expressly subject to, and conditioned upon, compliance with the terms and conditions which such plan or agreement may impose as conditions of participation in the benefits thereof.

FOURTEENTH: No enumeration of special powers, or any of the provisions of this agreement, shall be construed to limit any grant of general powers to the Committee contained in or conferred by any of the provisions hereof.

FIFTEENTH: The Committee as at any time constituted, and notwithstanding any vacancy, shall have all the rights, powers, discretions, privileges, immunities and interest of the Committee as originally formed. The Committee may, from time to time, add to its number by electing by the concurring vote of a majority of all its members, as from time to time constituted an additional member or additional members, and the member or members so elected shall have all the powers of, and, together with those herein named, or their successors, shall constitute the Committee under this agreement, with like force and effect as if they were all

specifically named herein as parties of the second part. Any member of the Committee may resign by filing written notice of his resignation with the Depositary and whenever a vacancy shall occur in the Committee, by death, resignation, or increase in number or otherwise, such vacancy shall be filled and a successor shall be elected and appointed by the vote of, or by a written designation filed with the Depositary and executed by a majority of the remaining members of the Committee. Every person so appointed shall have and may exercise all power, discretion, right, privilege, immunity and authority under this agreement previously possessed by any member of the Committee, as hereby constituted, and to the same extent and effect as if he were herein named as one of the Committee.

SIXTEENTH: Neither the Depositary nor the Committee, nor any member thereof, shall be liable for any action taken, in good faith, in the belief that any first mortgage gold bond or other document or any signature, presented to or received by the Depositary, or by the Committee or by any member thereof, or by any agent, officer or representative of either the Depositary or the Committee, is genuine, or is in the hands of the party entitled thereto.

The Depositary and the Committee and its members shall be under no duty or obligation not affirmatively expressed, and assumed by them, in this agreement. They shall be responsible for reasonable diligence in the performance of their duties hereunder, and to that extent only. Said members and the

Depository shall be responsible only for the exercise of good faith in any action taken hereunder or in connection with the subject matter of this agreement; and they shall not, nor shall any of them, be liable for their errors of judgment, or for any error of judgment, misfeasance or nonfeasance of any other member of the Committee, or of any officer, agent, servant or employe selected with reasonable care by the Depository, or by the Committee or any of its members. Any loss or liability of the Depository or of the Committee, or any member thereof, not arising through bad faith, shall be conclusively deemed to be a part of the expense of the Depository or the Committee herein provided for.

SEVENTEENTH: The Committee may act by a majority of its members, either by vote at a meeting or in writing executed without a meeting, and any action taken by any one member of the Committee previously or subsequently authorized, ratified or approved by letter or telegram from one of the remaining members, shall be considered and shall be the action of the Committee. Any member of the Committee may vote or act by proxy or general power of attorney (who may be another member of the Committee or otherwise), and a vote or act of such proxy or attorney shall be as effective as the vote or act of such member. The Committee may limit or extend the time within which, and fix the conditions under which, deposits may be made under this agreement, and may impose penalties in respect to de-



posits received after such limit shall have expired, and, either generally or in special instances, may in its sole discretion accept deposits after any time limit has expired. The Committee shall have power to employ counsel, attorneys, engineers, accountants, experts, agents and employes as in its judgment shall or may be necessary or useful. Neither the Depositary nor the Committee, nor any of its members, shall be personally liable for any act or omission of any officer, agent or employe selected by it, or them, in good faith, nor for any error of judgment or mistake of law. No member of the Committee shall be liable for any act or acts of any other member, nor for anything but his own individual willful misconduct.

EIGHTEENTH: For the purpose of securing funds necessary to pay the expenses, liabilities and obligations of the Committee, or to pay liens, taxes, charges, assessments, or other impositions upon, or in respect to, or otherwise to protect, preserve or improve the property or any portion thereof, upon which said bonds or the trust deed by which they are secured, directly or indirectly, constitute a lien, or which may be at any time purchased or acquired by or on behalf of, or deposited with the Depositary or the Committee, or to make any improvements in said property, which the Committee shall consider necessary, or to pay the expense of maintaining the same, or to acquire any property represented thereby, either directly or indirectly, or to discharge or compromise and settle any prior liens, or any claims which

in the judgment of the Committee or its attorneys are or might become prior liens on any of the property aforesaid, or which might tend to decrease or affect the value of said property, or to pay expenses incurred, either before or after the execution of this instrument for any of the purposes aforesaid, or for any other purpose authorized by this agreement, the Committee may borrow money and pledge as security for the payment thereof this agreement and the obligations of the depositors hereunder, also the bonds and coupons deposited hereunder, and any other bonds and coupons at any other time subject hereto, and also any property purchased or acquired by or on behalf of, or deposited with the Depositary or the Committee under the authority conferred by any of the provisions of this agreement. The Committee may apply any sums which shall be collected or received by it to apply on the deposited bonds or coupons, or otherwise, to the payment of any sums so borrowed and to the payment of the expenses, obligations or liabilities aforesaid.

NINETEENTH: Any member of the Committee and any firm or corporation of which he may be a member, agent, employee or officer, or any one or more of them, or any of the officers or agents of either thereof, may be or become a depositor hereunder and pecuniarily interested in any property or matters which are or may become the subject of this agreement of reorganization or adjustment which the Committee may prepare or approve and adopt as herein provided; and may contract with the Com-

mittee, or may be a member of any other committee or syndicate which may contract with the Committee, or which may be formed, constituted or appointed in contemplation of or in connection with any plan or agreement of reorganization or readjustment of said Kings Hill Irrigation & Power Company, or its property.

TWENTIETH: The Depositors expressly agree that time is of the essence of their respective agreements to pay all moneys payable by them hereunder, and for the deposit of their bonds and the execution and return of this agreement, and that any signer hereto, or depositor of bonds hereunder who shall fail to pay any call on him, made by the Committee, within thirty (30) days after such call shall have been mailed to such depositor or within such extended time as the Committee may, by vote or by writing signed by at least a majority of its members, fix for the payment of said sums, shall have no rights under this agreement; and this agreement shall, in the discretion of the Committee, be, as to such person or persons failing to make any such payment within the time aforesaid, the same as if the signature of such person or persons had not been made hereto, or his or their bonds deposited hereunder.

TWENTY-FIRST: The Committee shall not, except at its own election and absolute discretion, be obligated (anything herein contained or implied to the contrary) to make any contract or incur any obligation whatsoever until or unless all funds suffi-

cient, in the judgment of the Committee, for the payment thereof and of all other obligations incurred, or that may be incurred by it, shall then be in its hands and subject to its absolute control for the purposes aforesaid.

**TWENTY-SECOND:** The Committee, by the execution and delivery of this agreement, is under no obligation, legal or equitable, express or implied, to any holder or owner of any of said first mortgage gold bonds, or other creditors or holders of the capital stock of said Kings Hill Irrigation & Power Company, or any person whosoever, other than the holders of certificates or receipts of deposit issued in pursuance of this agreement.

**TWENTY-THIRD:** If an amount of the outstanding first mortgage gold bonds of said Kings Hill Irrigation & Power Company, sufficient to comply with the requirements of paragraph second hereof, shall not be deposited hereunder by said 10th day of November, 1911, or such other date as shall be finally determined upon by the Committee, the Committee may declare this agreement terminated. In any event this agreement shall be terminated upon there being filed with the Depositary a written notice to that effect signed by the registered holders of three-fourths in amount of the bonds deposited hereunder, or it may be terminated by action of the Committee evidenced by a writing signed by a majority of its members and filed with the Depositary; but such termination shall not affect previous acts



or contracts of the Committee. This agreement shall not, however, be effectually terminated until all the expenses incurred by the Committee, including reasonable remuneration to its members and to the Depositary, shall have been paid. Upon the termination of this agreement, whether in pursuance of the provisions of this paragraph, or of a plant of reorganization, or otherwise, the Committee shall file with the Depositary the originals or duplicates of its accounts of receipts and disbursements, and shall mail to each of the Depositors, in so far as their addresses are appended hereto or filed in writing with the Depositary, notice of the filing of said account. If legal proceedings shall not be taken to impeach said accounts, within sixty days after the mailing of said notices, they shall, as against all parties interested therein, be conclusively presumed to be correct.

**TWENTY-FOURTH:** The Committee is hereby authorized to construe this agreement, and its construction of the same, made in good faith, shall be final, conclusive and binding upon the Depositors and upon the holders of all certificates of deposit. The Committee may supply defects and omissions herein or may make such modifications as in its judgment shall be expedient to carry out the same properly and effectively, and its judgment as to such expediency or necessity shall be final and conclusive. The Committee shall have power whenever in its sole judgment it shall be advisable, to amend this agreement.

All amendments shall be filed with the Depositary and copies thereof shall be mailed to the Depositors in the manner provided in paragraph Thirteen hereof for the mailing of notices. Any and every such amendment shall stand and be binding and effectual until and unless disapproved within thirty (30) days after such mailing, by the vote of a majority in interest of the Depositors. The verified certificate of the Secretary or other agent of the Committee as to the mailing of such copies to the Depositors shall be conclusive of the fact of such mailing.

TWENTY-FIFTH: Each of the bondholders assenting hereto and becoming a depositor and beneficiary hereunder shall sign this instrument, or a copy thereof, and as many copies as shall be signed by any or either of such bondholders shall together constitute one and the same instrument, as fully, to all intents and purposes, as if each had signed the same copy hereof, and all of said copies shall be deposited with the Depositary and by it delivered to the Committee. The depositing of bonds hereunder and the acceptance of the receipt or certificate of the Depositary for such bonds shall, at the election of the Committee, but not otherwise, have the same force and effect as if the owner or holder of said bonds had, in addition thereto, subscribed to this agreement.

In witness whereof, all members of the Committee have signed this agreement on the day and year

first above written, and the Depositors have signed this agreement and deposited their bonds.

WILLIAM J. LOUDERBACK,  
JOSEPH E. OTIS,  
FRANK M. MURPHY,  
Committee.

Bondholders.	Address.	Par Value of Bonds.
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KINGS HILL IRRIGATION & POWER  
COMPANY

FIRST MORTGAGE BONDS.

To the Central Trust Company of Illinois,  
Depositary,  
125 West Monroe Street,  
Chicago, Illinois.

Gentlemen:

The undersigned Committee appointed by the bondholders of the Kings Hill Irrigation & Power Company under and pursuant to the terms and provisions of the certain Security Holders' Agreement dated October 28, 1911, hereby amend said Agreement and declare said Agreement to be amended in the following particulars, to-wit:

1. By appointing the Central Trust Company of Illinois depositary of said bonds in the place and stead of the Western Trust and Savings Bank.

2. By causing to be inserted in said Security Holders' Agreement the name of the Central Trust Company of Illinois wherever in said Agreement the name Western Trust and Savings Bank appears.

3. By accepting the resignation of Mr. Frank M. Murphy as a member of the Committee and electing Mr. Albert G. Lester a member of the committee as successor to Mr. Murphy.

4. By inserting the name of Albert G. Lester in said Security Holders' Agreement wherever the name Frank M. Murphy appears.

5. By amending paragraph Seventh of the Security Holders' Agreement so that the same shall and does read as follows:

"Seventh: By signing this Agreement the depositors, and each of them, agree with the Committee and with each other that they will at all times, and from time to time, promptly when and as called for by the Committee, pay to the Committee, or such person or bank as may be nominated in the call thereof, their pro rata share of any sums up to, but not, in any event, in excess of, fifteen per cent, of the aggregate of the par values of the bonds deposited respectively by the several depositors, which may be called for by the Committee for disbursement by it pursuant to the purposes contemplated by this Agreement, including reimbursement to the Committee for all sums advanced by it or any of its members, or borrowed by it for such disbursement; and,



further, that they will indemnify and save harmless the said Committee to the extent aforesaid, from all loss or liability for acts done and liabilities incurred or assumed on account of said purpose; provided that no call or assessment in excess of five per cent. of the par value of the bonds so deposited shall be made at any one time and that not more than one such call or assessment shall be made during any one period of ninety successive days."

6. That said Agreement had originally read as now amended in the foregoing particulars.

And the undersigned, pursuant to the provisions of said Agreement, herewith file the said amendments with you, said Central Trust Company of Illinois, as depositary.

Dated, Chicago, Illinois, April 8, 1912.

JOSEPH E. OTIS,  
WILLIAM J. LOUDERBACK,  
ALBERT G. LESTER,  
Security Holders' Committee.

Chicago, Illinois, December 13, 1912.

THIS IS TO CERTIFY that on January 6, 1912, there was deposited with Western Trust and Savings Bank, written notice, signed by the remaining members of the Committee, of the election and appointment of Albert G. Lester to fill the vacancy in the Committee caused by the resignation of Frank M. Murphy.

IT IS HEREBY FURTHER CERTIFIED that on the 8th day of April, 1912, the original of the above instrument of amendment was filed with said Western Trust and Savings Bank.

CENTRAL TRUST COMPANY OF ILLINOIS.

Successor to Western Trust and Savings Bank,  
Depository,

(Signed)

By W. T. Abbott,  
Vice President.

State of Illinois,  
County of Cook,—ss.

ALBERT G. LESTER, being first duly sworn, deposes and says that he did, on the 8th day of April, 1912, mail copies of a notice containing the foregoing amendments to all holders of record of receipts or certificates of deposit under the Security Holders' Agreement, dated October 28, 1911, and signed by Kings Hill Irrigation & Power Company, and that said notices were addressed to said holders at the addresses written opposite their respective names in the execution of said Agreement, except in so far as said holders have filed notices in writing with the Depository giving other addresses, in which event such notices were mailed to such new addresses.

(Signed)

ALBERT G. LESTER.

Subscribed and sworn to before me this 13th day of December, 1912.

(Signed)

James M. Cleaver,  
Notary Public.

(Seal)

OFFICE OF THE COUNTY RECORDER OF  
TWIN FALLS COUNTY.

Twin Falls, Idaho, March—, 1909.

State of Idaho,

County of Twin Falls,—ss.

I hereby certify that on the 23 day of March, 1909, there was filed for record at the request of The American Trust and Savings Bank of Chicago, Illinois, at 4:40 P. M., in my office, an Indenture dated March 1st, 1909, being an amendment or supplement to the First Mortgage Deed of Trust dated November 2nd, 1908, both executed by the Kings Hill Irrigation & Power Company to The American Trust and Savings Bank, as Trustee, and given as security for a bond issue of Five Hundred Thousand Dollars (\$500,000.00).

Said Indenture and supplemental deed of trust dated March 1st, 1909, has been filed for record in this office and will be recorded in Book 7 of Mortgages at Page . . . . . and a duplicate original of said Indenture was on the . . . . . day of March, 1909, at 4:41 P. M., filed for record in said office as a mortgage of personal property and a minute thereof will be made in Book 1 at Page . . . . . of the records required by law to be kept of Chattel Mortgages.

Chattel Mtg. No. 595.

(Seal)

H. T. WEST,

County Recorder, Twin Falls County.

Fees 25c paid.

by R. H. Roys, Deputy.

OFFICE OF THE COUNTY RECORDER OF  
OWYHEE COUNTY.

Silver City, Idaho, March 20, 1909.

State of Idaho,

County of Owyhee,—ss.

I hereby certify that on the 20th day of March, 1909, there was filed for record at the request of The American Trust and Savings Bank of Chicago, Illinois, at 9:30 A. M., in my office, an Indenture dated March 1st, 1909, being an amendment or supplement to the First Mortgage Deed of Trust dated November 2nd, 1908, both executed by the Kings Hill Irrigation & Power Company to the American Trust and Savings Bank, as Trustee, and given as security for a bond issue of Five Hundred Thousand Dollars (\$500,000.00).

Said Indenture and supplemental deed of trust dated March 1st, 1909, has been filed for record in this office and will be recorded in Book 8 of Mortgages at Page 26, and a duplicate original of said Indenture was on the 20th day of March, 1909, at 9:35 A. M., filed for record in said office as a mortgage of personal property and a minute thereof will be made in Book 2 at Page 12 of the records required by law to be kept of Chattel Mortgages.

(Seal)

J. S. ST. CLAIR,

County Recorder, Owyhee County.



OFFICE OF THE COUNTY RECORDER OF  
LINCOLN COUNTY.

Shoshone, Idaho, March 19th, 1909.

State of Idaho,

County of Lincoln,—ss.

I hereby certify that on the 19th day of March, 1909, there was filed for record at the request of The American Trust and Savings Bank of Chicago, Illinois, at 2 P. M., in my office, an Indenture dated March 1st, 1909, being an amendment or supplement to the First Mortgage Deed of Trust dated November 2nd, 1908, both executed by the Kings Hill Irrigation & Power Company to The American Trust and Savings Bank, as Trustee, and given as security for a bond issue of Five Hundred Thousand dollars (\$500,000.00).

Said Indenture and supplemental deed of trust dated March 1st, 1909, has been filed for record in this office and will be recorded in Book 4 of Mortgages at page 391 and a duplicate original of said Indenture was on the . . . . . day of March, 1909, at 2 P. M., filed for record in said office as a mortgage of personal property and a minute thereof will be made in Book 1 at Page K of the records required by law to be kept of Chattel Mortgages.

(Seal)

HARRY W. ANDERSON,  
County Recorder, Lincoln County.

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*In the Circuit Court of the United States of America,  
in and for the District of Idaho, Southern Division.*

PACIFIC COAST PIPE COMPANY, a Corporation,  
Plaintiff,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation,  
Defendant.

### STIPULATION.

It is hereby stipulated and agreed by and between the above named plaintiff and defendant, by their respective attorneys, whose names are subscribed hereto, that the depositions of T. B. Garrison, William W. Greenwood, L. Murray Grant, L. A. Harding, Charles A. Paul, Arthur A. Anderson and L. F. Hawley, each and all of them residents at Seattle, State of Washington, witnesses on behalf of the plaintiff, may be taken before J. N. Ivey, Notary Public in and for the State of Washington, residing at Seattle, Washington, or before any other notary public in and for said state, residing at Seattle, Washington, on the 29th day of June, 1911, beginning at 10 o'clock A. M.; that such taking of depositions may be continued from day to day until completed, or may be adjourned by the notary public before whom said depositions shall be taken; that, when the depositions of the above named witnesses, or of such of them as shall be offered for such purpose, shall have been taken and subscribed by them, the notary before whom taken shall attach

thereto his certificate and shall enclose said depositions in a sealed envelope or envelopes and shall deposit the same in the postoffice, postage prepaid, addressed to A. L. Richardson, Clerk of the United States Court, Boise, Idaho.

That, upon receipt of said depositions by said clerk, the same may be immediately published without any order of court therefor and the said depositions, and each of them, or any part or portion thereof, may be introduced in evidence on behalf of either or both plaintiff and defendant.

All objections to want of notice or to the form of taking said depositions, or either of them, or certifying to the same, and any and every objection thereto, are hereby expressly waived, except only objections as to the competency, relevancy or materiality of the same, or of, any part or parts, portion or portions thereof.

It is further stipulated and agreed that the said parties hereinbefore named, and each and all of them, reside more than one hundred (100) miles from the place of trial herein and more than one hundred (100) miles from any place at which a Circuit Court of the United States for the District of Idaho is appointed to be held by law.

Dated, Boise, Idaho, June 12th, 1911.

N. M. RUICK,

Attorney for Plaintiff.

RICHARDS & HAGA,

Attorneys for Defendant.

## EXHIBIT A.

*In the Circuit Court of the United States of America,  
in and for the District of Idaho, Southern Division.*

PACIFIC COAST PIPE COMPANY, a Corporation,  
Plaintiff,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation,

Defendant.

THIS IS TO CERTIFY: That in pursuance of the stipulation of the respective parties above named hereunto attached, I, J. N. Ivey, a Notary Public in and for the State of Washington, residing at Seattle, caused to appear before me at 10 o'clock A. M. June 29th, 1911, at the office of Kerr & McCord, 316 Mutual Life Building, Seattle, Washington, William W. Greenwood, L. A. Harding, L. Murray Grant, Charles A. Paul, Arthur A. Anderson, L. F. Hawley and T. B. Garrison, witnesses on behalf of the plaintiff named in the stipulation. J. A. Kerr, Esq., of Kerr & McCord, appeared as attorney for the plaintiff for the purpose of taking this deposition, and Robert Evans, Esq., appeared as attorney for the defendant.

T. B. Garrison, being first duly sworn as a witness on behalf of the plaintiff, testified as follows:

By Mr. Kerr:

Q. State your name, age, place of residence and occupation.



A. T. B. Garrison, age 49 years, residence Seattle, occupation, Manufacturer of water pipe.

Q. What relation do you sustain to the plaintiff, the Pacific Coast Pipe Company?

A. I am the president and General Manager.

At this time by mutual consent of counsel the taking of the deposition of the witnesses named in the stipulation was adjourned until 10:30 o'clock A. M. June 30th, 1911.

.....  
Notary Public.

On this 30th day of June, 1911, at the hour of eleven o'clock A. M. the taking of the testimony in the above entitled cause was resumed pursuant to adjournment. Mr. Garrison was withdrawn from the witness stand and L. M. Grant was duly sworn on behalf of the plaintiff and testified as follows:

By Mr. Kerr:

Q. Please state your name, age, residence and occupation.

A. L. M. Grant, 34 years of age, reside in Seattle, occupation Civil Engineer.

Q. What relation did you sustain in the years 1909-1910 and 1911 to the plaintiff, the Pacific Coast Pipe Company?

A. I was Chief Engineer of the Pacific Coast Pipe Company.

Q. Were you acquainted with George L. Swendsen?

A. Yes, sir.

Q. He was Chief Engineer of the Kings Hill Irrigation & Power Company?

A. Yes, sir.

Q. Was he the Chief Engineer of the Power Company during the time plaintiff was furnishing that Company certain pipe and material for the irrigation project that is referred to in the complaint in this action?

A. Yes, sir.

Q. About what time did your Company open negotiations for the sale of material sued for in the complaint with the defendant, Kings Hill Irrigation & Power Company?

A. Speaking from memory, without checking myself up, I think it was in March, 1909, when we first had negotiations and we carried them on continuously on down to the date of the last correspondence.

Q. Did you on behalf of the plaintiff visit the property upon which this pipe was to be used—the property of the defendant?

A. Yes, sir.

Q. How did you happen to visit their plant in Idaho?

A. I was on a certain trip, the date of which I cannot give without referring to the records and I have not got them with me, and I met Mr. Swend-

sen in Boise; learning from him that his brother, who was assistant engineer, was out on the project and at his invitation and by telephone appointment of Mr. Swendsen with his brother W. G. Swendsen, I met W. G. Swendsen on the project and drove over part of it.

Q. Did you visit that project with a view of supplying defendant with the necessary pipe and material for the construction of the irrigation system?

A. Yes, as a matter of fact at that time there was a part of this material being put in place.

Q. This same material or the old material?

A. The old material.

Q. Are you acquainted with and do you know the amount and character of the material that was furnished by the plaintiff to the defendant Kings Hill Irrigation & Power Company for use in the construction in the main canal and laterals and syphons referred to and described in paragraph three of the complaint?

A. Regarding the material we furnished—

Q. First, was it furnished for the construction of the canal, laterals and syphons referred to in paragraph three of the complaint?

A. In general it was, but I could not state that all of it was used just as covered there, because some of that pipe was used for pumping plants that are not set forth in there, although they are part of that project.

Q. The part of the material that went into the pumping plants was furnished by you to the defendant for the construction of the system down there, referred to in the complaint?

A. Yes, sir.

Q. To what extent did you personally, as Chief Engineer of the plaintiff, carry on the negotiations so far as the correspondence show, with the defendant?

A. I wrote all the letters with reference to the continuous stave pipe and also letters with reference to the banded pipe which required engineering knowledge.

Q. Are you acquainted with the actual material shipped and delivered to the defendant by the plaintiff for use in the system?

A. In general I am. I could not state that I saw absolutely every bit of it.

Q. I call your attention to certain papers and documents which I will mark defendant's Exhibit "A," being a general statement of account between the plaintiff and the defendant, showing a balance due the plaintiff of \$10,071.33 and certain receipted freight vouchers and a letter under date of November 15th, 1909, from the plaintiff to the defendant; a letter from the defendant to the plaintiff dated August 13th, 1909, and statement of account of material furnished under date of July 13, July 17, August 12, October 23, 1909, February 25, February



26, February 28, March 8, May 18, and July 2, 1910, and ask you to state whether these papers show correctly the amount of material furnished to the defendant by the plaintiff and the character of the material and the date when furnished?

A. They do.

Q. I call your attention to a package of papers commencing March 19th, 1909, and closing July 25th, 1910, consisting of original letters from the defendant or its Chief Engineer and your replies thereto and various telegrams passing between the parties, without encumbering the record by identifying these several letters and telegrams by date, and I will enclose them in this envelope and mark it Plaintiff's Exhibit "B" and ask you if this is the correspondence which passed between the parties in this suit with reference to the material furnished and which is the subject matter of this action?

A. It is.

Q. Where the initials W. W. G. appear on these typewritten letters, what does that indicate?

A. It indicates the letters were dictated by W. W. Greenwood, Sales Manager.

Q. And where the papers are initialed L. M. G. by whom were they dictated?

A. They were dictated by me.

Q. How many times, Mr. Grant, did you visit the works of the defendant from early in March, 1909, until July 2, 1910?

A. Do I understand by that the actual project or the office of the Chief Engineer?

Q. The office of the Chief Engineer.

A. I would say at least half dozen times.

Q. Do you know that from the date you commenced to furnish the material, July 13, 1909, until the last was furnished, the defendant was engaged in the construction of this system of theirs for which this material was furnished?

A. Yes, sir.

Q. How was the system constructed during the time this material was furnished, was it constructed as a unit or in sections, or did the work go on all over the system at once?

A. Well, naturally the construction work began at the head works, the attempt was to carry it on so as to get water on that portion nearest the head works first, but it might be termed a continuous construction.

Q. And now in Exhibit A that pipe of the various sizes was furnished from 57 inch pipe down, now where was the largest size pipe used with reference to their head works?

A. They were used at points where the main canal had to be carried across draws or ravines and were in the nature of a continuation of the canal.

Q. As I take it then the 57 inch pipe was used in the main canal?

A. Not being absolutely familiar with their map I could not say whether it was in the main canal or the principal laterals, it was either of the two.

Q. Was that used in the project in the main canal or main laterals from the head works outward?

A. Yes, sir, a link in that construction.

Q. Where was the smaller pipe used, the 12 inch, 20 inch, 43 inch, 24 inch, 2 inch?

A. It would be impossible for me to say precisely where it was used, nor could I say the exact purpose for which all of it was used, but in general it was stated to me that it was to be used on laterals and for certain small pumping plants which are a part of the main project and the purpose of which is to elevate the water to tracts of land that were above the main canal.

Q. Stated to you by whom?

A. By Mr. Swendsen, the Chief Engineer.

Q. Did your Company furnish all the pipe during the period covered by this account for that system being constructed by the defendant, or were they purchasing quantities of pipe from other people?

A. Insofar as I know I think we furnished all the pipe.

Q. This plaintiff had furnished, prior to the furnishing of the material that is here in controversy, to this defendant large quantities of pipe, had it not?

A. Yes, sir.

Q. And had been paid for it?

A. Yes, sir.

Q. And it was used as part of the system?

A. Yes, sir.

Q. Did the plaintiff Company furnish the pipe and material for the construction of their entire system?

A. No, sir. The system across the Snake River, the first work on the line, was furnished by another Company, but it was not altogether satisfactory and the rest of it was given to us.

Q. And with that exception the plaintiff furnished the pipe referred to in Exhibit "a"?

A. All of it to the best of my knowledge.

Q. Do you know about how long they engaged in the construction of the system?

A. Well, there is work still being done on it; that would be to the best of my knowledge from 1909 down to date.

Q. What was the occasion of your various visits to the Chief Engineer?

A. In general the visits were made by appointment with the Chief Engineer to discuss with him in regard to his requirements in the way of large pipe.

Q. In the construction of the system did they re-



quire the various sizes set forth in Exhibit A and that they purchased from your Company?

A. Yes, sir.

Q. At the time the plaintiff began the sale and delivery to them of the pipe was it possible to have figured out the entire amount of pipe that would be required in the various places, or did that develop as the work progressed and the system was extended?

Defendant objects to the question.

A. I think on any large irrigation system the requirements are only finally determined as the work is carried to completion.

Q. At the time your Company sold them this material, was there or was there not any understanding that you were to furnish the material required?

Defendant objects unless shown in writing.

A. There was an understanding of this nature with the Chief Engineer; That he preferred our material and as long as our prices were right, we would get the business.

Q. And it was in pursuance of that understanding that this material was furnished?

A. Yes, sir.

Q. On your several visits to the Chief Engineer was the question of size and character of material furnished discussed? Was that the occasion of your visits?

A. Quite generally, of course. At times when I was passing through Boise I called to see him, just to make a business call, but on the occasion of these special appointments we discussed the size and nature of the pipe.

### CROSS EXAMINATION.

BY MR. EVANS:

Q. You speak about the agreement made with the Chief Engineer; was that with Mr. Swendsen?

A. Yes, I would not be quoted that this was an agreement, I would rather say that it was an understanding.

Q. It was not in writing?

A. No, just a conversation.

Q. At that time you did not know that they would purchase any special quantity?

A. Not any specific amount, no. We knew they would need large quantities.

Q. The price was not agreed on?

A. We agreed that our prices were to be right. It was impossible to agree on prices until we knew the size pipe required.

Q. There was no price fixed on any size at that time?

A. No, only as they were ready to order.

Q. And the size was not agreed upon or fixed?

A. No, only as they were ready to order.

Q. And the orders came in subsequent to that date?

A. Yes, sir.

Q. In other words the understanding with you and the Chief Engineer was that if your prices were right and they saw fit to order from you they would do so and you would fill the order?

A. Yes, sir.

Q. And all orders were subsequently filled in response to telegrams, not letters?

A. I think without exception at this time this method of doing business was carried out; while in Boise Mr. Swendsen, the Chief Engineer, would give me a verbal order and follow with a confirmation by letter.

Q. So that any orders given subsequently were followed out by a written confirmation?

A. I believe so.

Q. Now, you do not know of your own knowledge the description of the property upon which any part or portion of this pipe was used or applied?

A. Well, as an Engineer I could not say I knew that unless I checked up the corners. I simply know we have a map put out by Kings Hill Irrigation & Power Company showing their project and this pipe was used on the land set forth in their map.

Q. Do you know that of your own knowledge aside from seeing the map?

A. Not of all the material, no.

Q. You say a larger size of pipe is used on the mains or laterals, as I understand it you are reasoning about it as an Engineer that the larger parts were used up close to the head works?

A. I have seen the location of the syphons and the main pipe and the plans in Mr. Swendsen's office showing that they are in the main canal and they were designated in that shape by numbers from the head works.

Q. Did you ever see the pipe laid in the particular position as you have indicated on the ground itself?

A. Not this pipe.

Q. You sold a large quantity of pipe prior to this, to this Company?

A. Yes, sir.

Q. Was that all paid for?

A. Yes, sir.

Q. All laid on the ground and in use at the time of your visit referred to?

A. That I cannot say without consulting the records at the office.

Q. Now, the letters that have been put in under Exhibit "B", do they constitute all the letters, telegrams and orders received by you from the defendant Company?

A. I would go just as far as Mr. Garrison in his



testimony, all unless some have been mixed in other files.

Q. It is possible on account of the three different files being mixed up that some might have been overlooked?

A. It is possible, yes.

Q. You would not say these are all?

A. No, sir.

Q. These are what you found in your office on coming down this morning?

A. Yes, sir.

Q. To make the point clear, your Company did not consider itself obliged to furnish any particular quantity of pipe to the defendant until the orders contained in these letters were received and you agreed to fill them from time to time?

A. Decidedly we would not feel obliged to furnish pipe that had not been ordered.

Q. You will say then, as I understand it, that there was no connection at all between the different shipments. They were separate individual transactions?

A. As a business transaction, yes.

Q. They were separate shipments, separate orders and prices were fixed separately at each time?

A. On each general order, not necessarily each shipment. There were often several shipments in one order.

Q. You speak about this being a continuous construction, your statement in that respect is only your reasoning as an Engineer, is it?

A. No, I think I could testify as a matter of personal knowledge. I was on the works there this spring.

Q. You have not been there at all times?

A. No, not at all times, but I know that certain contractors have been there and had their equipment on the ground continuously.

Q. You don't know of your own knowledge that you have furnished all the pipe that went into the system?

A. No, I could not testify to that unless I examined it and had it identified.

Q. So at this time you don't know of your own knowledge?

A. No, sir.

Mr. Garrison recalled:

By MR. KERR.

Q. Mr. Garrison, you are claiming in this action aside from attorney's fees and interest, \$10,071.33, a balance shown to be due you by your Exhibit "a".

A. Yes, sir.

Q. There seems to be no controversy over the value of that material under the pleadings?

A. No, sir.

Q. Did your Company furnish the materials at the times specified in Exhibit "a"?

A. Yes, sir.

Q. I will ask you whether Exhibit "B", the package of correspondence referred to by the witness, Mr. Grant, contains all the letters, telegrams and communications bearing upon the furnishing of this material by you and the character of the contract for furnishing it?

A. No, sir.

Q. Well, it contains the correspondence necessary to enable the court to determine the character of the contract itself?

Defendant objects as calling for the conclusion of the witness.

A. There might be an order left out.

Q. What I want to get at is this, have you carefully examined your files for the purpose of getting all the correspondence passing between the plaintiff and the defendant having any bearing on this controversy?

A. Yes, sir.

Q. And does this Exhibit A contain those letters and communications in writing?

A. Yes, sir.

Q. If there are any others they are not in your files?

A. Or I have overlooked them?

Q. How carefully have you examined them?

A. Mr. Harding looked through and I looked through a portion myself and as far as I can tell we have everything necessary to prove the account.

Q. If you discover any letters or communications in writing passing between the plaintiff and the defendant before this case comes up or at any time you are ready and willing to supply them, if they are in your possession?

A. Yes, sir.

Q. And this Exhibit B contains the correspondence that actually passed between your Company and the defendant?

A. Yes, sir.

Q. Has any part of this \$10,071.33 been paid to you by the defendant?

A. No, sir.

Q. And it is all due?

A. Yes, sir.

Q. Does this Exhibit "A" contain what purports to be duplicates of the original bills for the material furnished to the defendant, together with the statements; are they true and correct copies of the original statements made at the time by the defendant?

A. Yes, sir.

Q. And upon the same letter heads?



A. Yes, sir.

Q. Containing the same terms with reference to interest?

A. Yes, sir.

Q. Has any other firm to your knowledge supplied any part of the material for the defendant Power Company's system of irrigation?

A. Not to my knowledge.

Q. And did your Company furnish from time to time the material for the construction of this system as ordered by the defendant?

A. Yes, sir.

Q. And you continued up until the date of the last item specified?

A. Yes, sir, we carried it as an open account and let them order from time to time.

Q. I find in this Exhibit A one cash item for \$169.88. Did the defendant pay you on account of the purchase of this material any other cash than that?

A. No, sir.

Q. That was the only cash payment?

A. Yes, sir.

Q. There is no dispute between you as to the freight?

A. No, sir.

Q. And these credits for freight are proper credits?

A. Yes, sir, the freight bills that they have paid and sent to us from time to time as material was delivered.

Q. This correspondence has been in the possession of your company since received?

A. Yes, sir.

Q. And is in the same condition as when received?

A. Yes, sir.

#### CROSS EXAMINATION.

By MR. EVANS.

Q. I want to ask you Mr. Garrison about the practice, they would send you an order and you sent back an acceptance for that prior to shipment?

A. Yes, we endeavored to acknowledge all orders that we get.

Q. And the correspondence shows that you did acknowledge all orders received by you from the defendant Company?

A. Yes, sir, it is supposed to be there unless it is in our files and has been overlooked and if overlooked we would be glad to furnish it.

Q. I will ask you to make a thorough search and bring in any other correspondence you may find so that we can attach it.

A. Yes, sir, I will do that.

Q. The acceptance of the order always preceded the shipping and invoice of all goods shipped?

A. Yes, sir.

Q. You sent out the invoice at the time of loading the cars?

A. Yes, sir, naturally.

Q. Supposing they would be paid in thirty days?

A. Yes, sir.

Q. Now, as stated by Mr. Grant, there was no contract made by you before any goods were shipped to the effect that you were to ship these people any special price?

A. Quotations were made on the material when forwarded.

Q. Quotations were made from time to time as they were forwarded?

A. Yes, sir.

Q. There was no agreement prior to any of these shipments that you were to ship certain quantities at stated prices?

A. No agreement except that contained in the proposition and accepted in the order.

Q. Each order was a separate agreement from the other.

A. Yes.

## RE-DIRECT EXAMINATION.

Q. All of these bills for material were due thirty days after date, were they not?

A. Yes, sir.

Q. And in your dealings with these people from July 15th, 1909, until July 2d, 1910, the only payment received on account was the one to which I called your attention?

A. Yes, sir.

Q. And you continued to deliver goods?

A. Yes, sir.

Q. You treated the whole account as an open, running account?

A. Yes, sir.

Q. And you charged them on your books with material?

A. Yes, sir.

## CROSS-EXAMINATION.

Q. Did you send a statement covering the goods shipped?

A. Yes, sir.

Q. And did you send statements at the end of the month?

A. Yes, I suppose so. Statements go out the first of every month.



DIRECT EXAMINATION.

Q. When they sent you this \$169 did they request you to apply it on any particular shipment?

A. No—they might have had a letter saying a certain invoice.

At the time the list of witnesses was sent to the attorney for the plaintiff at Boise, Idaho, the plaintiffs representative here had no knowledge of the nature of the issues made in this case and had inserted into the stipulation to take the testimony the names of W. W. Greenwood, L. A. Harding, Charles A. Paul, Arthur A. Anderson and L. F. Hawley, the testimony of each of whom in the light of the issues is now deemed unnecessary, the said witnesses being witnesses whose testimony was to have been taken for the purpose of showing shipment and delivery. The amount of plaintiff's claim being admitted by the answer, plaintiff waives the taking of their testimony.

State of Washington,  
County of King,—ss.

I, J. N. IVEY, a Notary Public in and for the County of King, State of Washington, do hereby certify that the witnesses T. B. Garrison and L. M. Grant, in the foregoing deposition named, were by me duly sworn to testify the truth, the whole truth, and nothing but the truth, in said cause; that said deposition was taken at the time and place mentioned in the annexed stipulation, to-wit, at the office of Kerr & McCord, 316 Mutual Life Building,

Seattle, King County, Washington, and on the 29th day of June, 1911, between the hours of nine o'clock a. m. and six o'clock p. m., of said day, and continued on the 30th day of June, 1911, between the hours of nine o'clock a. m. and six o'clock p. m., of said day; that said depositions were reduced to writing and when completed were carefully read over by the said witnesses and being by them corrected were by each of them subscribed in my presence.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 1st day of July, A. D. 1911.

(Seal)

J. N. IVEY,

Notary Public in and for the State of Washington,  
residing at Seattle.

Notary fees, \$15.00.

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*In the Circuit Court of the United States of America  
in and for the District of Idaho, Southern Division.*

PACIFIC COAST PIPE COMPANY, a Corporation,  
Plaintiff,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation,

Defendant,

### STIPULATION.

In the above entitled cause, it is hereby stipulated by and between the attorneys for the respective part-

ies, plaintiff and defendant, that the depositions of such persons as may be offered as witnesses both on behalf of plaintiff and defendant may be taken before James L. White, as examiner, appointed or to be appointed for that purpose, on the 7th day of July, 1911, beginning at 10 o'clock A. M. on said day; that the taking of said testimony may be continued from day to day or may be adjourned from time to time, the testimony to be taken pursuant to the rules of said court, except insofar as a compliance with said rules shall, with the sanction of the court, have been waived by this stipulation.

And it is further stipulated that all objections to the form and manner of taking or certifying the said testimony, or to a noncompliance with the rules of said court relating thereto, are, so far as the same may, with the permission of the court, be waived, hereby expressly waived, and the said testimony so taken may be received in evidence on behalf of either party to said action, subject only to objections to the competency, relevancy and materiality of the same, which objections shall be noted by the examiner when made and may be renewed at the hearing or trial of said cause.

Dated, Boise, Idaho, June 12th, 1911.

N. M. RUICK,

Attorney for Plaintiff,

RICHARDS & HAGA,

Attorneys for Defendant.

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## EXHIBIT B.

*In the Circuit Court of the United States of America,  
in and for the District of Idaho, Southern Division.*

PACIFIC COAST PIPE COMPANY, a Corporation,  
Plaintiff,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation,  
Defendant.

## DEPOSITIONS.

I hereby certify that, pursuant to a stipulation of the parties, plaintiff and defendant, in the above entitled action, which stipulation is hereunto attached, I, James L. White, a notary public in and for Ada County, State of Idaho, caused to appear before me at my office, Room No. 603 Idaho Building, Boise, Idaho, at 10:00 A. M., July 7, 1911, the witnesses hereinafter in these depositions severally named, as witnesses on behalf of plaintiff, and no witnesses appearing on behalf of defendant; that at the taking of said depositions, N. M. Ruick, Esq., appeared as attorney for plaintiff, and Richards & Haga appeared as attorneys for defendant.

Heber Q. Hale, being first duly sworn as a witness on behalf of plaintiff, testified as follows:

## DIRECT EXAMINATION BY MR. RUICK.

Q. State your name, age and residence.

A. Heber Q. Hale, age 31, residence, Boise, Idaho.



Q. What official position, if any, do you now hold with the State of Idaho?

A. I am the chief clerk of the State Land Department of Idaho.

Q. You mean by that, chief clerk in the office of the State Board of Land Commissioners of the State of Idaho?

A. I do.

Q. As such, have you in your custody the contract between the Kings Hill Irrigation & Power Company and the State of Idaho, bearing date May 1, 1908, for the construction of an irrigation system under the provisions of the Carey Act?

A. Yes, sir.

(Contract produced and received in evidence, without objection, and marked Plaintiff's Exhibit "1".)

It is hereby stipulated by and between counsel for plaintiff and defendant, respectively, that the certified copy of the contract referred to, of date May 1, 1908, annexed to the deposition in the case now pending in the above entitled court, entitled, "Pacific Coast Pipe Company, a corporation, plaintiff, vs. Kings Hill Irrigation & Power Company, a corporation, defendant," may be considered as attached to and forming a part of these depositions, and may be used with the same force and effect as if attached hereto.

No cross examination.

By agreement, hearing adjourned until 10:00 o'clock A. M. July 8, 1911.

10:00 o'clock A. M., July 8, 1911. Hearing resumed. Heber Q. Hale recalled for further examination.

DIRECT EXAMINATION BY MR. RUICK.

Q. Mr. Hale, have you in your custody, as Chief Clerk in the office of the State Board of Land Commissioners, the map of the Kings Hill Irrigation & Power Company's Carey Act irrigation project?

A. Yes, sir, I have.

(Witness produces blue-print map.)

Mr. Ruick.

We now offer this map in evidence. Received without objection as Plaintiff's Exhibit "2." By agreement, a certified copy or tracing of this map may be substituted for the original.

No cross examination, whereupon the examination of said witness was concluded.

W. H. Puckett, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RUICK.

Q. Mr. Puckett, you are regularly admitted to practice as an attorney before the Supreme Court of the State of Idaho?

A. Yes, sir.

Q. How long since you were admitted to practice?

A. About twenty years.

Q. Have you been continuously engaged in the practice of your profession since that time ?

A. I have.

Q. You consider yourself competent to testify as to the value of services as attorney?

A. I do.

Q. In the case of a suit in the United States Circuit Court to foreclose a material men's lien, the amount claimed is \$12,000 and upwards, which sum is conceded to be due. The right to a lien for all or a portion of this amount is contested, as are other points in the case. In other words, it is a contested case, and not a default case. What, in your judgment, would be a reasonable attorney fee to the attorney for the plaintiff in such foreclosure suit?

A. Both suits growing out of the same transaction—this suit and the other one?

Q. No, they relate to separate matters.

A. Would the same legal proposition be raised in both suits?

Q. No, the legal propositions differ in the two cases.

A. I would say about \$1000.00.

## CROSS EXAMINATION BY MR. HAGA.

Q. If the amount recovered should be considerably less than \$12,000, should the fee, in your opinion, be less than what you stated?

A. No, the work has been done whether you win or lose.

Q. So if the recovery should be \$1,000 the fee should be the same, in your opinion, as though the recovery should be \$12,000 or upward?

A. The fee would be the same, because the work is the same. You can't anticipate what your recovery will be, unless you take it upon a percentage basis.

C. C. Cavanah, a witness called on behalf of plaintiff, being first duly sworn, testified as follows:

## DIRECT EXAMINATION BY MR. RUICK.

Q. You are an attorney regularly admitted to practice before the Supreme Court of this State?

A. I am.

Q. How many years' practice have you had in Idaho?

A. About fourteen years.

Q. Have you been engaged continuously in the practice of your profession in Idaho during that period?

A. I have.



Q. You consider yourself competent to testify as to the value of services rendered by an attorney?

A. Yes, sir, I think so.

Q. In the case of a suit pending in the Circuit Court of the United States for the foreclosure of a material men's lien wherein the sum claimed is \$12,000 and upwards, which sum is admitted by the pleadings to be due, but the right to a lien is contested, as are other points in the case, requiring the taking of depositions here and elsewhere, what, in your judgment, would be a reasonable fee to the attorney for the plaintiff in such an action?

A. Well, I should think \$1,000.

Q. You would regard that fee as reasonable?

A. Yes, sir.

#### CROSS EXAMINATION BY MR. HAGA.

Q. Would the amount recovered in the suit in any way vary your estimate of the value of the services? That is to say, if the lien should be recovered for \$4,000 and no lien for the balance of the claim, would that vary your opinion as to the matter?

A. No, I think not. I take the same view as Mr. Puckett—I would base it upon the work involved. That is the idea I have always entertained in these matters. Of course, it is hard to say just what the amount should be.

Q. That is to say, the amount that the defendant should pay in the case I have just stated, would

be the amount the plaintiff should be liable for to its attorney? That is to say, if the lien is recovered for only \$1,000, the defendant should not be required to pay the same amount as attorney's fee as if the lien had been recovered for the full amount?

A. I do not quite catch your idea.

Q. Your estimate was the sum that plaintiff should pay his attorney for his services, and not the amount the defendant should be liable for as reimbursement in the event the lien was for only a small portion of the amount claimed?

A. No, my idea is that the sum of \$1,000 would be a reasonable compensation to the plaintiff's attorney in the action related by Mr. Ruick. It doesn't make any difference to me whether the defendant or plaintiff paid it, I consider that a reasonable sum for the services rendered.

Q. You are basing that wholly independent of whether it is paid by the defendant or by the plaintiff?

A. Yes, sir, it doesn't make any difference who paid it, I consider that a reasonable fee to the attorney for plaintiff in the case.

Geo. L. Swendsen, a witness called on behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RUICK.

Q. What is your profession, Mr. Swendsen?

A. Civil Engineer.

Q. How many years' practice have you had in your profession?

A. Sixteen years.

Q. Were you the Chief Engineer of the Kings Hill Irrigation & Power Company, a corporation engaged in the construction of an irrigation system under the provisions of what is known as the Carey Act, and under a contract with the State of Idaho?

A. Yes, sir.

Q. When did your services with them in that capacity begin—about?

A. April 1st, 1908.

Q. And have you continued in that capacity up to the present time?

A. No, sir.

Q. When did that relation cease?

A. About the end of 1910.

Q. Then you were such engineer from April 1st, 1908, continuously up until the latter part of 1910?

A. No, I should not say continuously. My continued services ended sometime in August or September, 1909, with the Kings Hill Irrigation & Power Company, but I was engaged in various matters for them until about the date stated.

Q. Then your relations as engineer for them continued; in other words, you were consulted in matters?

A. Yes, sir.

Q. As such Chief Engineer, did you have general charge and supervision of the planning and construction of the irrigation system of that company?

A. Yes, sir.

Q. Who were associated with you in that capacity, or under you as engineer?

A. W. G. Swendsen, W. A. Alexander and Harry Cole; those were the three principal men.

Q. During what season was most of the work on the Kings Hill Irrigation & Power Company's project done?

A. 1908 and 1909.

Q. Do you recall the purchase or the ordering by that company, through yourself as Chief Engineer or otherwise, from the Pacific Coast Pipe Company, of Seattle and Ballard, Washington, of certain material to be used in the construction of this system?

A. Yes, sir, I remember they furnished the materials.

Q. Do you recall whether or not they were principally ordered through you, or by you, as the Chief Engineer?

A. I am not sure whether I ordered the majority of them, or whether the orders were sent to the Boise office and transmitted by Mr. Cunningham.



Q. Who prepared the plans and specifications forming the basis of these orders given the Pacific Coast Pipe Company?

A. I did.

Q. Mr. Swendsen, you have knowledge of all the materials which were supplied by the Pacific Coast Pipe Company to the Kings Hill Irrigation & Power Company?

A. Yes, sir.

Q. And the Pipe Company furnished to the Irrigation Company invoices, did they not, of those different shipments?

A. Yes, sir.

Q. And I believe there is no dispute so far as you know, between the Pacific Coast Pipe Company and King's Hill Irrigation & Power Company, the materials which were actually furnished and supplied?

A. I could not answer that definitely, because I do not know what their arguments are about.

Q. Mr. Swendsen, were the materials which were ordered by the Kings Hill Irrigation & Power Company of the Pacific Coast Pipe Company ordered for, and were the same to be used in, the construction of its irrigation system?

A. Yes, sir.

Q. The Kings Hill Irrigation & Power Company did not order of the Pacific Coast Pipe Company

any materials which were not for use in the construction of its irrigation system, so far as you know?

A. Not to my knowledge.

Q. If any materials were ordered, -or if different materials were ordered, by the Kings Hill Irrigation & Power Company so far as you have any knowledge, and particularly those which were ordered by you on behalf of the Company, they were all for use in the construction of this irrigation system?

A. With one small exception—a pipe ordered for an individual, which pipe came through the Kings Hill Company, which comes to my memory, but was a very small item.

Q. And these materials were ordered to be used in the construction of that system?

A. Yes, sir.

Q. And they were actually used in that construction?

A. Yes, sir.

Q. And were these materials, or identical materials, essential to the completion of the system, Mr. Swendsen?

A. Yes, sir.

Q. These materials were ordered in order to fill specifications, were they not?

A. Yes, sir.

Q. Now, respecting the item of interest on invoices, are you familiar with the invoices that were rendered by the Pacific Coast Pipe Company—with the different shipments and the terms?

A. No, sir; I only had to do with quantities and qualities.

Q. Have you seen their invoices?

A. Yes, sir.

Q. Do you recall that all invoices of the Pacific Coast Pipe Company which were rendered to the Kings Hill Irrigation & Power Company specified that interest should run at the rate of eight per cent per annum after thirty days?

A. No, sir, I do not recall that feature at all. It may be there.

Q. About when did construction begin on this project of the Kings Hill Irrigation & Power Company?

A. In April, 1908.

Q. The materials in question in this suit, Mr. Swendsen, were furnished between some date in December, 1909, and some date in June, 1910. During that period, was construction work going on on the project?

A. It was in July, 1909.

Q. This material which was furnished by the Pacific Coast Pipe Company for the Kings Hill Irrigation & Power Company was put in place in the

system upon its arrival or within a reasonable time thereafter, was it not?

A. Yes, sir.

Q. In other words, it was usually required as soon as it got there?

A. With one slight exception—there is some that is not yet in place.

Q. Attached to the depositions of Garrison and Grant, and possibly others, in this case is a quantity of correspondence signed “Kings Hill Irrigation & Power Company,” in one form or another, “By Geo. L. Swendsen, Chief Engineer.” Are you the individual referred to there, Mr. Swendsen?

A. Yes, sir.

Q. You recall conducting quite an extensive correspondence with the Pacific Coast Pipe Company in relation to this material?

A. Yes, sir.

#### CROSS EXAMINATION BY MR. HAGA.

Q. And was the main canal completed before December 28th, 1909?

A. Yes, sir.

Q. The Company had furnished water for irrigation during at least a part of the season of 1909, had it not?

A. Yes, sir.

Q. Then the construction work done after December 28th, 1909, would be confined to branch canals, laterals, service ditches, etc?



A. Yes, sir, it was confined exclusively to two branches.

Q. What branches were they?

A. The branch going to King Hill and the pumping system at Tuana Gulch.

Q. The irrigation system, without those two branches which you have spoken of on which this material was used, could serve quite a large acreage of land, could it not?

A. Yes, sir.

Q. And, as a matter of fact, it does serve quite a large acreage—quite an acreage depending upon those two canals?

A. Yes, sir.

Q. In ordering material, Mr. Swendsen, or before ordering material, were prices quoted by the plaintiff in this case, or were prices requested by you?

A. Yes, sir, on all the pipe prices were requested.

Q. And they furnished prices at which they should supply pipe or material?

A. Yes, sir.

Q. In doing so, was anything said about interest?

A. No, sir, nothing said to me about it.

Q. In their quotation of prices, was anything said about interest?

A. No, sir.

Q. Their engineer, Mr. Grant, conferred with you several times in person, I believe, in relation to the material you would be using down there?

A. Yes, sir.

Q. Did he ever refer to interest?

A. No, sir.

Q. I believe there is no contract for the furnishing of this material covering the whole amount furnished?

A. Not to my knowledge.

Q. The orders were made as you discovered from time to time that you needed pipe, or the material which they could furnish?

A. Yes, sir.

Q. Whatever contracts there were consisted of the orders which were from time to time made for material?

A. No, sir, I should say that that consisted of all quotations which were sent here and considered by myself in connection with Mr. Hammett, together with the orders made.

Q. But these quotations were made from time to time as the material was required by you in the work?

A. Yes, sir.

#### RE-DIRECT EXAMINATION BY MR. RUICK.

Q. These branch lines to which counsel refers, and the pumping plant in connection with Tuana Gulch, they were all a part of the system were they

not, and essential to its completion as per contract with the State?

A. No, the King Hill branch was not essential to the completion of the contract with the State, and I do not know about the Tuana Gulch.

Q. Were they not for lands that the company had contracted to irrigate for the State?

A. Not the King Hill system; they were private lands.

Q. They were private lands such as referred to in the agreement with the State?

A. They were on the other side of the river.

Q. But they were such lands as the irrigation company was permitted, under the contract, to sell water for, were they not?

A. I presume so.

Q. And the water came from the same source as the water for the irrigation of the Carey Act lands?

A. Yes, sir.

Q. You say nothing was said about interest in any quotations of the Pacific Coast Pipe Company?

A. No, sir; I do not remember of its ever being mentioned.

Q. There was no necessity for making reference to interest when the terms of the company were indicated by their invoices, specifying the terms as thirty days, and interest after 30 days?

Objected to by Mr. Haga, as calling for conclusion of the witness.

Q. What were the terms that were understood, Mr. Swendsen? Thirty days, was it not?

Objected to by Mr. Haga, as leading.

A. I had no understanding in regard to terms.

Q. You would not have it understood, Mr. Swendsen, that you did not have an understanding with the Pacific Coast Pipe Company as to the terms of payment?

A. Nothing was said in their quotations, and nothing said in my asking for proposals.

Q. Do you not understand, from their invoices or otherwise, that their terms were thirty days?

A. I repeat, I had no understanding about the matter—didn't give it any consideration.

Q. Never entered into your calculations as to how long a time would be allowed the company for the payment for these materials?

A. The Boise office had charge of that matter.

Q. The Boise office of the Kings Hill Irrigation & Power Company, you refer to; not your own office?

A. Yes, sir; the company's office.

Further hearing continued until 2:00 o'clock p. m., this date, July 8th, 1911.

Two o'clock p. m., July 8, 1911, hearing resumed, attorneys for both parties being present. There being no further witnesses offered for either side, the taking of depositions is concluded.



State of Idaho,  
County of Ada,—ss.

I, James L. White, a Notary Public in and for the County of Ada, State of Idaho, do hereby certify that, pursuant to the foregoing and annexed stipulation, the witnesses, Heber Q. Hale, W. H. Puckett, C. C. Cavanah and Geo. L. Swendsen, were required to appear before me, at my office, room 603 Idaho Building, Boise, Idaho, on the 7th and 8th days of July, 1911, and being by me first severally duly sworn to testify to the truth, the whole truth and nothing but the truth in said cause; that said depositions were taken at the time and place herein before mentioned, between the hours of 9:00 o'clock a. m. and 6:00 o'clock p. m. of said days, being continued from said 7th day to said 8th day of July, 1911, by consent of all parties, N. M. Ruick, Esq., appearing, at the taking of said depositions, as attorney for plaintiff, and Richards & Haga appearing as attorneys for defendant; that said depositions were reduced to writing by me, and the reading of said depositions and the subscribing of the same by said witnesses were, by the counsel for the respective parties, then and there duly waived.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 11th day of July, 1911.

(Seal) JAMES L. WHITE,  
Notary Public in and for Ada County, State of Idaho.

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All agreements contingent upon strikes, delays of carriers and other causes beyond our control.

SOLD TO Kings Hill Irrigation & Power Co., Boise, Idaho.  
 Ballard Station, Seattle, Wn., Feb. 28, 1910

PACIFIC COAST PIPE CO.

Order No. ....  
 Shipped to King Hill.  
 .....

Factory and Office  
 Ballard Sta., Seattle, Wn.  
 Telephone Ballard 616.  
 Car Initial, O. & W.  
 Car Number, 20133  
 Approx. Wt., 30,000.

TERMS CASH.

Interest will be charged after 30 days from date of invoice at 8 per cent per annum.

NO DISCOUNT ALLOWED.

F. O. B. King Hill.

No. Pieces	Size	Head	Spc.	Wire	Shell	Coupling	Lengths	Feet	Total	@ per foot
5	20	50	3 1/2	1		Wood	12	60	60	\$ .85
3	20	75	2 5-16	1		Wood	16	48		
3							12	36	84	.94
8										78.96
11	20	100	2	1		Wood	16	176		

[illegible]





All agreements contingent upon strikes, delays of carriers and other causes beyond our control.

SOLD TO Kings Hill Irrigation & Power Co., King Hill, Idaho.  
Ballard Station, Seattle, Wash., May 18, 1910.

PACIFIC COAST PIPE CO.

Order No. ....	Factory and Office	Car Initial, N. P.
Shipped to .....	Ballard Sta., Seattle, Wash.	Car Number, Local
.....	Telephone Ballard 646.	Approx. Wt. ....

TERMS CASH.

Interest will be charged after 30 days from date of invoice at 8 per cent per annum.  
NO DISCOUNT ALLOWED.  
F. O. B. Seattle.

1	2" Gate Valve	\$4.00
1	2x6 Blk. Nip	.15
1	2" Blk. Nip	.10
1	2" Blk. Mall ell bd.	.25
	Ctge.	.25
	Prepaid freight	1.56
		\$6.31

## BILL HEAD SAME, Dated July 17, 1909.

1	Blow Off Valve complete	
1	Saddle	\$17.40
2	Pcs. 4" Blk. pipe, 8" long	
1	4" Blk. pipe, 3 ft. long	
1	4" Elbow	
1	4" Screw Gate	
	Packing for same.	
	Shipped in second car of staves.	

## BILL HEAD SAME, Dated Aug. 12, 1909.

Material for		
1750' 57" Continuous Stave Pipe @	\$2.91	\$5092.50
Credit S. P. 87745, freight on Rods	\$328.83	
U. P. 29017, freight on Staves	292.45	
O. R. & N. 10703, freight on Staves	306.05	
		927.33
		<u>\$4165.17</u>

SOLD TO Kings Hill Irrigation &amp; Power Co., Boise, Idaho.

DATE	No. FEET	DIAMETER	AMOUNT	SHIPPING POINT	SOLD F. O. B.	STRUCTURE	REMARKS
1909.							
July 13	753'	8"	\$ 152.48	G. Ferry	Ballard		
July 17	Blow Off	4"	17.40				
Aug. 12	1750'	57"	5092.50	G. Ferry	G. Ferry	C2	
Oct. 23	715'	16"	419.57	Bliss	Ballard	A	
Oct. 23	1573'	12"				A	
Oct. 23	850'	30"	2176.82	Bliss	Ballard	A	
1910.							
Feb. 25	770'	20"	654.50	King Hill	King Hill	F	
Feb. 26	786'	20"	725.41	King Hill	King Hill	F	
Feb. 28	909'	20"	902.48	King Hill	King Hill	F	
Feb. 28	902'	20"	982.83	King Hill	King Hill	F	
Mar. 8	141'	20"	169.20	G. Ferry	G. Ferry	F	
May 18	Blow Off	2"	6.31		Ballard	F	
July 2	1911'	12"	744.53	King Hill	Ballard	J	

July 2	721'	12"	319.21	King Hill	Ballard	J
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\$12,363.24

*Credits.*

Sept. 10, 1909,

Cash .....\$ 169.88

Aug. 14, 1909,

to

Mar. 28, 1910,

Fr't. .... 2122.03

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\$ 2,291.91

Balance due.

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\$10,071.33

Cash credit \$169.88 covers our invoices, July 13th and 17th, 1909.



# STATEMENT.

Kings Hill Irrigation & Power Co., Boise, Idaho.  
 Ballard Station, Seattle, Wash.,.....

## PACIFIC COAST PIPE CO.

Manufacturers of  
 WOOD PIPE.

Telephone Ballard 646.

Cor. 14th Ave. N. W., and West 46th St.

TERMS 30 DAYS NET

### Eight Per Cent Interest Charged on All Overdue Accounts.

1909.	Bal. per Statement.	Dr.	1909.	Cr.
July 13	To Mdse. ....	\$ 152.48	Aug. 14	Freight .....\$ 328.83
July 17	To Mdse. ....	17.40	Aug. 14	Freight ..... 292.45
Aug. 12	To Mdse. ....	5,092.50	Aug. 14	Freight ..... 306.05
Oct. 23	To Mdse. ....	419.57	Aug. 14	Freight ..... 132.46
Oct. 23	To Mdse. ....	2,176.82	Sept. 10	Cash ..... 169.88
			Dec. 20	Freight ..... 259.10
1910.			1910.	
Feb. 25	To Mdse. ....	654.50	Mar. 5	Freight ..... 198.00
Feb. 26	To Mdse. ....	725.41	Mar. 28	Freight ..... 209.14

Feb. 28	To Mdse. ....	902.48	Mar. 28	Freight .....	198.00
Feb. 28	To Mdse. ....	982.83	Mar. 28	Freight .....	198.00
Mar. 8	To Mdse. ....	169.20			
May 18	To Mdse. ....	6.31			
July 2	To Mdse. ....	744.53			
July 2	To Mdse. ....	319.21			
		<u>\$12,363.24</u>			
		2,291.91			
	Balance .....	<u>\$10,071.33</u>			

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If the above is not correct, notify us at once.

All accounts must be settled upon terms specified upon bills rendered.

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All agreements contingent upon strikes, delays of carriers and other causes beyond our control.

SOLD TO Kings Hill Irrigation & Power Co., Boise, Idaho.  
Ballard Station, Seattle, Wash., July 2, '10.

PACIFIC COAST PIPE CO.

Order No. ....  
Shipped to King Hill  
.....  
Factory and Office  
Ballard Sta., Seattle, Wash.  
Telephone Ballard 646. Copy.

Car Initial, S. P.  
Car Number, 54153  
Approx. Wt., 32200

TERMS CASH

Interest will be charged after 30 days from date of invoice at 8 per cent per annum.

NO DISCOUNT ALLOWED.

F. O. B. Ballard

No. Pieces	Size	Head	Spc.	Wire	Shell	Coupling	Lengths	Feet	Total	@ per foot
16	12	100	2	4		Wood	16	256		
2							15	30		
19							14	266		
6							13	78		
13							12	156		
1							11	11		
38							10	380		

7	9	63	1304	\$ .40½	\$528.12
8	8	64			
<hr/>		<hr/>			
110					
12	16	192			
3	15	45			
9	12	108			
1	10	10			
11	8	88			
1	7	7			
12	6	72			
11	5	55			
15	4	60	707		
5	14	70			
<hr/>		<hr/>			
80			20		
	Less tenons		<hr/>		
			687	.31½	216.41
					<hr/>
					\$744.53



All agreements contingent upon strikes, delays of carriers and other causes beyond our control.

To King Hill Irrigation Co., Boise, Idaho.

PACIFIC COAST PIPE CO.

Order No. ....

Shipped to Glenns

Ferry.

Factory and Office

Ballard Sta., Seattle, Wash.

Telephone Ballard 646.

Car Initial, N. P. local

Car Number, 43974

Approx. Wt., 7275

TERMS CASH

Interest will be charged after 30 days from date of invoice at 8 per cent per annum.

NO DISCOUNT ALLOWED.

F. O. B. Ballard

No. Pieces	Size	Head	Spc.	Wire	Shell	Coupling	Lengths	Feet	Total	@ per foot
16	8		3	6		O. J.	16	256		
6							15	90		
7							14	98		
3							13	39		
13							12	156		
2							11	22		
2							10	20		
2							9	18		

1	7			
6	36			
3	15			
3	12			
	<hr/>			
64	Allowed for tenons	16		
		<hr/>		
		753	\$ .201 $\frac{1}{4}$	\$ 152.48
		<hr/>		
		<hr/>		

(Same bill head as above, dated Oct. 23, 1909; Car No. 48064.)

2	12	1 1/2	4	Wood	15	30			
1					14	14			
2					12	24			
1					11	11			
1					8	8	87	.42 1/2	
<hr/>									
29	12	In N. P. Car 37839							
7		3	4	Wood	16	464			
9					15	105			
1					14	126			
					13	13	708	.36 1/4	604.32
<hr/>									
Material for									
850'	30" Continuous Stave Pipe at \$1.85 per ft.								
1900	Bands	Wt. 11900 lbs.							
1900	Shoes	1890							
1000	Tongues	225 14015 lbs.							
<hr/>									
<hr/>									
1572.50									
<hr/>									
\$2176.82									
<hr/>									





3	12	2	4	Wood	16	48	
1					14	14	
1					13	13	
1					12	12	.39
					<hr/>		87
1	12	1 3/4	4	Wood	16	16	
1					14	14	
1					11	11	
3					10	30	
2					8	16	.40 1/2
					<hr/>		87
1	16	3	2	Wood	16	16	
26					12	312	.52
					<hr/>		328
1	16	2 1/2	2	Wood	15	15	
3					13	39	
2					12	24	.53
					<hr/>		78
4	16	1 7/8	2	Wood	16	64	
1					14	14	.50 3/4
					<hr/>		78
4	16	1 1/2	2	Wood	16	64	
1					14	14	.65 1/2
					<hr/>		78





(Same bill head as above, dated March 8, 1910.)				
6	20	175	13/8	1
3			Wood	
			16	96
			15	45
			141	1.20
				169.20
9	9	5 1/2	band couplings	
907' 18" pipe in this car for Kings Hill Extension Irrigation Co.				



(Same bill head as above, dated July 2, 1910.)

13	12	50	3	4	I. J.	16	208		
4						15	60		
11						14	154		
9						12	108		
11						8	88		
17						7	119	737	
65	Less	tenons						721	
1	12"	90 degree bend,	337 lbs.,	at	41½c				\$15.16
1	12"	Lgt. Gate valve							36.50
6	2"	screw gates, at	\$4.25						25.50
12	2x6	Nipples, at	12c						1.44
									\$ 319.21
6	U	Bolts							
2	Bands								
3	lbs.	Rubber gasket							

(Same bill head as above, dated Feb. 25, 1910; Car No. 60064.)

3	20	50	3 1/2	1	Wood	15	45			
10						14	140			
2						13	26			
17						12	204			
5						11	55			
22						10	220			
10						8	80			
								770	\$ .85	\$ 654.50
69										

70 2 1/2" band couplings

## EXHIBIT E.

*This Agreement*, made and entered into, in duplicate, this 1st day of May, 1908, by and between the STATE OF IDAHO, the party of the first part, through the State Board of Land Commissioners of said State, said Board consisting of Frank R. Gooding, Governor; Robert Lansdon, Secretary of State; John J. Guheen, Attorney General, and S. Belle Chamberlain, Superintendent of Public Instruction of said State, and the KINGS HILL IRRIGATION & POWER COMPANY, a corporation organized and existing under the laws of the State of Nevada and doing business in the State of Idaho under and by virtue of a compliance with the laws thereof, the party of the second part, WITNESSETH: That,

*Whereas*, the Glenss Ferry Land & Irrigation Company, predecessor in interest of the said party of the second part, did heretofore, to-wit, on the 18th day of May, 1903, file with the said State Board of Land Commissioners of the State of Idaho, a proposal for the Construction of certain irrigation works situated in the counties of Lincoln, Cassia (now Twin Falls), Owyhee and Elmore in said State of Idaho, under the provisions of Section 4 of the Act of Congress approved August 18th, 1894, commonly known as the Carey Act, and the acts amendatory thereof, and the laws enacted by the State of Idaho in pursuance of the power granted by the said Acts of Congress; and,

*Whereas*, at the request of the State of Idaho, the lands lying under said irrigation works have been

by contract between the United States and the State of Idaho, bearing date the 30th day of March, 1904, set apart by the United States in compliance with the provisions of said Acts of Congress, the said lands being designated as List No. 7 of the State of Idaho, copies of said list being on file in the United States Land Offices at Boise and Hailey, Idaho, and the said lands so set apart and included in said list No. 7 being particularly and fully set out in the said contract between the United States and the State of Idaho, to which reference is hereby had for a full and complete description of said lands; and,

*Whereas*, on the 6th day of May, 1904, the said State Board of Land Commissioners, pursuant to resolution duly passed on said date by said Board, entered into a formal contract with the said Glenns Ferry Land & Irrigation Company, Limited, for the construction of said irrigation works in pursuance to said proposal; and,

*Whereas*, the said Glenns Ferry Land & Irrigation Company, Limited, after expending large sums of money under said contract and partially completing the said irrigation works, sold, transferred and conveyed all its rights, title and interest in said irrigation works and in and to said contract with the State of Idaho, dated May 6th, 1904, to the said Kings Hill Irrigation & Power Company, the party of the second part hereto; and,

*Whereas*, on the 22nd day of January, 1908, the said State Board of Land Commissioners, pursuant



to resolution theretofore passed by said Board, entered into a contract with the party of the second part for the completion of said irrigation works; and

*Whereas*, it satisfactorily appearing to said Board from the reports of engineers and others familiar with said irrigation works and the lands situated thereunder and to be irrigated therefrom that the cost of constructing and completing said works will greatly exceed the estimates of construction upon which the price of water rights was fixed and determined in the said contract of January 22nd, 1908, and the said contract of May 6th, 1904, and that the amount of land that can be irrigated from such irrigation works is considerably less than what is shown by the proposal of the said Glenns Ferry Land & Irrigation Company as susceptible of irrigation therefrom and that by reason thereof it is now deemed necessary and proper to increase the price at which water rights may be sold by the party of the second part for the irrigation of said lands, and to otherwise change and modify the said contract of January 22nd, 1908, and the said contract of May 6th, 1904; and

*Whereas*, the said State Board of Land Commissioners have resolved to enter into a new contract with the said party of the second part upon the terms and conditions hereinafter set forth, and have directed the execution of this agreement;

*Now, Therefore*, in consideration of the premises and of the covenants and agreements hereinafter

mentioned and to be kept and performed by the respective parties hereto, it is mutually covenated and agreed, as follows:

## I.

### PURPOSES OF CONTRACT.

The said party of the second part agrees to construct and build the said irrigation works mentioned in said proposal and hereinafter referred to and more particularly described, and to provide for the sale of shares of water rights in said irrigation works from time to time, as and in the manner hereinafter provided to persons filing upon portions of the lands hereinbefore described and referred to, and to the purchasers and owners of school and other State lands and to the owners of other lands situated under said irrigation works, or any extension thereof and which are susceptible to irrigation therefrom; such shares or water rights to be sold on the terms hereinafter specified, and also to finally provide the manner of transferring the ownership, management and control of said works to the purchasers of said shares of water rights as hereinafter provided.

## II.

### GENERAL SPECIFICATIONS FOR CONSTRUCTION.

It is hereby agreed that the party of the second part shall construct the said irrigation works according to the following specifications:

*Point of Diversion.* The main canal of said irri-

gation system diverts water from the Malad River at a point on the right bank of said river near the north and south line between the NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  and the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 35, Twp. 6, South of Range 13 East, Boise base and meridian; said point between approximately South 75 degrees 22 minutes, East 1,195.6 feet from the southeast corner of Section 27, said township and range.

*General Course of Canal.* From the said point of diversion the canal continues along the right bank of said river for a distance of about 5,600 feet to Snake River; thence across Snake River on a steel span bridge in an inverted syphon wooden pipe 1,400 feet to the south side of Snake River; thence running in a westerly direction along the south side of Snake River for a distance of about twenty miles to a point near the center of Section 5, Township 6, South of Range 11 East, B. M., which is the end of the main canal, with the lower or northwesterly end of the distribution system extending to a point near the northeast corner of Section 33, Township 5, South of Range 10 East. The said bridge to have a supporting strength four times the weight of the pipe and water resting on it, and the said pipe to be from 5 to 5 $\frac{1}{2}$  feet in diameter, as may be deemed necessary by the State Engineer in order to carry the water required for the irrigation of the lands herein mentioned. Steel spans and pipe to be constructed and guaranteed by responsible contractors.

*Head-Works.* The head-works shall consist of a timber crib rock filled overflow diversion dam about

6 feet high; the cribs to be built of 8x8 inch Oregon fir timber, drift bolted with  $\frac{3}{4}$ -inch iron, about 80 feet long by 15 feet wide, with four head-gates, each four feet wide, substantially supported into entry-way to the canal.

*Structures.* All fluming, trestle works, pipe lines, bridges, headgates, waste-gates, pressure boxes and other structures shall be constructed in accordance with plans filed in the office of the State Engineer; provided, that such structures shall have a minimum capacity of 200 cubic feet per second, as the total delivery through the structures on the main canal line.

*Canal.* The main canal in earth section shall be on a grade of .00025 and of such section and depth as to provide a minimum carrying capacity of 200 cubic feet per second, to be reduced in capacity and dimensions as the water is diverted by laterals for irrigation purposes, but always to be of sufficient capacity to fully irrigate the lands herein mentioned and provided for, and to be constructed and built in accordance with the general plans and specifications hereinbefore referred to and filed in the State Engineer's office, and under his general supervision and direction.

*Laterals.* There shall be constructed such subordinate laterals with the necessary weirs and distributing gates as may be required to carry the water of such canal to within one-half mile of each quarter section described in the contract between the United



States and the State of Idaho and hereinafter referred to, and the lands of the State of Idaho hereinafter mentioned and all other lands, to be irrigated from said canal, so that the same may be available for use; all of said laterals, works, main canal, flumes, pressure boxes, trestles, bridges and pipe lines and other structures to be used in connection with said irrigation works shall be built and constructed in a good and workmanlike manner, and under the direction of the State Engineer and subject to his approval and the approval of the State Land Board.

It shall be the duty of the said party of the second part to file with the State Engineer of Idaho, notes showing the size and the courses and distances from angle to angle of the canal and main laterals, as soon as the same shall have been finally determined; provided, however, the changes may be made in the plans and specifications from time to time by agreement between the State Engineer and the State Land Board and the said second party, such changes, however, not to be of such character as will in any way impair the efficiency, durability or utility of the works for the purposes for which they are intended; and said second party shall on demand of said party of the first part, furnish such other and further detailed specifications and plans as said first party may require.

The main canal of this system shall have a carrying capacity, when completed, sufficient to deliver, simultaneously, one cubic foot of water per second

of time to every eighty acres of land described in this contract, together with all other lands susceptible of irrigation from said irrigation works and herein specified or referred to as nearly as the same can be estimated and agreed upon between the State Engineer and the State Land Board and the engineer of said second party.

The plans, specifications and details for the construction of the dams, canals, laterals, head-gates, bridges, trestle work, flumes and other structures required in the construction of such irrigation works, so far as the same are covered by the specifications hereinbefore referred to and to be filed and submitted herein, shall be submitted to the State Engineer and the State Land Board for their approval, prior to the beginning of construction or completion of said works, and the work, when completed, shall be in accordance with the specifications as finally determined upon, and to the satisfaction of the State Engineer and the State Land Board.

### III.

#### RIGHT OF WAY.

The said party of the first part grants to the said party of the second part, a right of way across all lands belonging to the State of Idaho, or that may be ceded to the State of Idaho, by virtue of the Act of Congress commonly known as the Carey Act, or by any other laws for the construction and operation of said reservoir and irrigation system, which right of way shall be equal to the actual width of the canal,

lateral or waste ditch at its base, from toe to toe of the embankment, together with a strip of land along one side of such canal, lateral or waste ditch and adjacent thereto, not to exceed fifty (50) feet in width along the main canal, thirty (30) feet in width along the laterals leading from said main canal, and a proportionate width along the smaller laterals and waste ditches; said right of way to be located as designated by the Chief Engineer of the party of the second part and approved by the State Engineer, and in all cases to be sufficient of ingress or egress along said canal, lateral or waste ditch, in proportion as the necessity therefor exists, and all water users on lands irrigated from said irrigation system shall have such right of way as may be necessary from the second party's canal or laterals to their own land in order to construct and maintain the necessary service ditches for their own use, and such right of way across said lands as may be necessary for waste ditches. No more laterals service or waste ditches shall be constructed across any premises than are necessary in the opinion of the Chief Engineer of the Company and the State Engineer, to properly irrigate the land so intended to be irrigated from such ditches and to carry away the waste water therefrom.

The laterals, service and waste ditches shall be constructed under the direction of the Chief Engineer of the Company and subject to his approval and the approval of the State Engineer. In case any land owner is dissatisfied with the location of any service

ditch across his premises he shall have the right to appeal to the State Board of Land Commissioners, whose decision shall be final. Detail maps showing the location of laterals and waste ditches constructed by the second party shall be filed with the Board and with the State Engineer, but such filing need not be made prior to the lands being thrown open for settlement.

#### IV.

#### APPROPRIATION OF WATER.

It is understood that the said party of the second part is the owner of the right to divert water from the Malad River at the point hereinbefore described, under the following appropriations made by its predecessors in interest: That certain appropriation made on the 26th day of March, 1902, by one Herman Rapp and one Ernest Pearson for the diversion of five hundred (500) cubic feet of water at the point above described to be used for irrigation and power purposes, and under that certain appropriation made by the said Glenns Ferry Land & Irrigation Company, Limited, on the 7th day of August, 1902, for the diversion and appropriation of five hundred (500) cubic feet of water to be used for irrigation purposes, and under that certain permit issued by the State Engineer of the State of Idaho on the 23d day of January, 1904, to F. J. Hagenbarth and R. J. Shields, being Permit No. 438, for eleven hundred (1100) cubic feet per second of the waters of said river to be diverted at the point of diversion hereinbefore described.



And the said party of the second part hereto agrees to cause to be furnished and delivered to the said canal out of the said appropriations, an equal amount, when measured at the points herein provided, to one-eightieth (1-80) of a cubic foot of water per second of time, for each and every acre of land described in the list of lands attached hereto and marked "Exhibit A", and being a portion of the lands segregated from the public domain and embraced in said contract between the United States and the State of Idaho, generally known as the Carey Act lands and hereinafter referred to as such, and for the irrigation of the lands belonging to the State of Idaho and lying under said irrigation works and susceptible of irrigation therefrom, and for the irrigation of all other lands embraced or mentioned in this contract and lying under and susceptible of irrigation from said canal and irrigation works; said water to be delivered and measured within one-half mile of the quarter section in which the land so irrigated or susceptible to irrigation therefrom is situated.

## V.

### ENTRY OF LANDS.

Upon the execution of this contract and when the said canal shall be so far completed as to ensure the delivery of water for irrigation and reclamation of said lands, the State Board of Land Commissioners of first part shall cause to be opened for settlement as provided by law, the lands described in the list of lands hereto attached as "Exhibit A", and known

as the Carey Act lands; provided, however, that second party nor any of its officers or employees shall not be permitted to file on any land under such canal as the agent or attorney-in-fact for any other person; and second party hereby warrants the title to said canal and irrigation system and to the water rights above mentioned, and agrees to defend such title at its own cost and expense in the event of any litigation concerning the same, before such canal and irrigation system is finally transferred and turned over to the corporation to be formed as hereinafter set forth.

## VI.

### APPLICATION FOR LANDS.

The said party of the first part through its State Board of Land Commissioners, agrees that it will not approve any application for or filing on said Carey Act lands, until the person or persons so applying shall furnish to the said Board a true copy of the contract entered into with the said party of the second part for the purchase of sufficient shares or water rights in said irrigation works, or shares of stock in the corporation to be formed as hereinafter provided, for the irrigation of the lands applied for, it being understood that such applicant shall have acquired a right to at least one-eightieth (1-80) of a cubic foot of water per second of time for each acre filed upon. And the said party of the second part hereby stipulates and agrees that to the extent of the capacity of said irrigation works, after such lands are open for entry and settlement, it will

sell or contract to sell water rights or shares for Carey Act lands so to be filed upon, to the qualified entrymen thereof, and to the purchaser of lands belonging to the State of Idaho and embraced within this contract, without preference or partiality other than that based upon priority of application.

## VII.

### SALE OF LANDS BY THE STATE.

That the said party of the first part, acting through its State Board of Land Commissioners, agrees to sell the Carey Act lands herein mentioned to such persons as are or will be by law entitled to file upon the same, for the sum of fifty cents (50c) per acre, one-half of which shall be paid at the time of application for the entry of such land made to the said Board, and the remaining one-half paid at the time of making final proof thereon.

## VIII.

### PRICE OF WATER RIGHTS.

Said party of the second part further agrees and undertakes that it will sell or cause to be sold to the person or persons filing upon any of the lands herein described, or to the owners of other lands not described herein but which are or may be susceptible of irrigation from its canal system, by good and sufficient contract of sale with the right of possession and enjoyment by the purchaser pending its fulfillment, a water right or share in said canal for each and every acre filed upon or purchased from the State or acquired from the United States, each of

said shares or water rights shall represent a carrying capacity in said canal sufficient to deliver water at the rate of one-eightieth (1-80) of one (1) second foot per acre per second of time, and each share or water right sold or contracted, as herein provided, shall also represent a proportionate interest in said irrigation works, together with all rights and franchises therein, based upon the number of shares finally sold in said irrigation works. Said irrigation system, however, to be built in accordance with the plans heretobefore filed with the Board, which irrigation system, according to said plans, has been determined by the State Engineer to have the carrying capacity hereinbefore mentioned.

Such water rights or shares shall be sold to the person or persons aforesaid for lands included in said segregations and for lands adjacent thereto or that can or may be irrigated therefrom when completed, at a price not exceeding Sixty-five (\$65.00) Dollars per share, except as is hereinafter provided, the same to be paid as follows: Not to exceed ten (10) per cent of the purchase price to be paid in cash at the time of sale, and the remainder to be paid in not less than nine annual installments; no such annual installment to exceed ten (10) per cent. of the purchase price. All deferred payments to bear interest at the rate of six (6) per cent. per annum, interest payable annually. The number of payments and the amount of each of such payments to be clearly stated in all contracts for the purchase of water rights, which may be entered into between



second party and such purchasers. Before any application for entry is received or approved, a copy of the form of water right contract used or to be used by second party in the sale of water rights, shall first be approved by the Board and no other form shall be used than the ones so approved.

To the person or persons purchasing any portion or portions of Sections numbered Sixteen (16) or Thirty-six (36), or any other lands belonging to the State of Idaho, and within the exterior limits of said segregations and which are susceptible of irrigation and reclamation from said irrigation system, water rights or shares shall be sold at a price not to exceed forty (\$40.00) dollars per share; provided, said water rights or shares are purchased within one year after the purchase of the lands from the State, and not exceeding Sixty-five (\$65.00) dollars per share at any time thereafter. Such payments to be made in annual installments as hereinbefore provided in the sale of water rights for Carey Act lands and all deferred payments to draw interest at the rate of six (6) per cent. per annum, interest payable annually.

In case purchasers or entrymen on lands other than those segregated under the Carey Act, decline to purchase water rights for two years or more after the water is ready for delivery, then two (\$2.00) dollars may be added to the price of the water right for each year's delay, or fraction thereof.

It is further agreed that no payment other than the initial payment and no interest shall be required under any contract either for Carey Act lands or

State or private lands, until the water for the said land is available from said canals for distribution at a point within one-half mile of each legal subdivision of one hundred and sixty (160) acres of the said land, and such water must be available at the beginning of the irrigation season in order to make such payments become due, and all payments and interest provided in said contracts shall be advanced in time according to the delay in the delivery of said water as aforesaid.

It is understood and agreed that the said party of the second part shall charge interest at the rate of six (6) per cent. per annum upon all deferred payments whenever said shares are sold upon a time contract. This agreement shall not, however, be construed to prevent the sale of shares or water rights to purchasers upon terms more favorable than those hereinbefore provided, or to prevent the payment of installments of the purchase price in advance of the maturity of the same at the option of the purchaser. But in no case shall water rights or shares be dedicated to any of the lands aforementioned or sold beyond the carrying capacity of the said canal system or in excess of the appropriation of water as hereinbefore mentioned.

## IX.

### TRANSFER OF POSSESSION AND MANAGEMENT OF CANAL.

It being necessary to provide a convenient method of transferring the ownership and control of said

canal and irrigation works from the said party of the second part herein to the purchasers of said water rights in said canal and for determining their rights among themselves and between said purchasers and the party of the second part herein, and for the purpose of operating and maintaining said canal during the period of construction and afterward, and for the purpose of levying and collecting tolls, charges and assessments for managing said canal and for the management and operation thereof, it is hereby provided that as soon as said lands are ordered thrown open for settlement, a corporation, to be known as the Glenns Ferry Canal Company, Limited, shall be formed at the expense of the party of the second part, the Articles of Incorporation of said Company to be approved by the Attorney General of the State of Idaho; that the authorized capital stock of said corporation shall be 18,000 shares, which amount is intended to represent one share for each acre of land which may hereafter be irrigated from said canal. All persons who prior to the formation of such corporation have purchased or acquired water rights or shares of water from said second party for the irrigation of lands embraced in this contract and being then the owners of such rights or shares, shall be entitled to receive and have issued to them, shares in such corporation so to be formed, equal in number to the water rights or shares of water then owned and held by such persons, and the remainder of the capital stock of such corporation shall be issued to the party of the second

part in consideration of the covenants and agreements herein contained, in order to enable it to deliver to purchasers of water rights the shares of stock representing the same. Said shares of stock, however, shall have no voting power and shall be without force or effect until they have been sold or contracted to be sold to the purchasers of land under said irrigation works.

At the time of the purchase of any water right after the formation of said corporation, there shall be issued to the purchaser thereof, one share of the capital stock of said corporation for each acre of land entered or filed upon. That the said party of the second part herein shall in case said water rights or shares of stock are not fully paid for, require the endorsement and delivery to it of said stock, and shall at the same time, require of said purchaser an agreement that until thirty-five (35) per cent. of the purchase price of said stock has been paid, the said party of the second part herein shall vote said stock in such manner as it may deem proper at all meetings of the stockholders of said corporation.

But the said second party hereto, nor the said Glenns Ferry Canal Company, Limited, cannot in any manner control any of the said system so as to limit the liability of the second party under the terms of this contract.

The said Glenns Ferry Canal Company, Limited, shall have the management, ownership and control, as above set out, of the said irrigation system as



fast as the same is completed and turned over to it for operation by the said party of the second part, as hereinafter provided. Whenever it is certified by the Chief Engineer of the Company and the State Engineer of Idaho, that certain portions of the said irrigation works have been so far completed as to permit the operation thereof for delivery of water to purchasers of water rights, the same may, with the consent of the State Land Board, be transferred and turned over to the said Glenns Ferry Canal Company, Limited, for operation. Such transfer and operation, however, shall not in any manner lessen the responsibility of the said second party with reference to the terms of this contract, nor shall such consent upon the part of the State Land Board be construed as a final acceptance of such portion of such canal, it being always understood that the acceptance of said irrigation system must be in its entirety, and that the bond given for the faithful performance of said contract must be made and be liable for the substantial completion of the entire irrigation system.

## X.

### WATER RIGHT DEDICATED.

The contract of sale of water right and the certificates of shares of stock in the corporations to be formed as hereinbefore provided, shall each upon being issued to the purchaser or holder of land under the said irrigation works, be made to indicate and define in the contract or certificate, as the case may be, the amount of water, to-wit: one-eightieth

of a cubic foot per second of time, allotted to each acre represented thereby, and a carrying capacity in the canal sufficient therefor, such water to be delivered from the canal during each and every irrigation season, and to be measured at or within one-half mile of the quarter section in which the land is situated, in such quantities and at such times as the condition of the soil, crops and weather may determine, but according to such rules and regulations, based upon a system of distribution of water to the irrigators in turn and by rotation, as will best protect and serve the interests of all users of water from such canal system. It is agreed that such system of distribution by rotation shall be devised by said party of the second part and used (if necessity arises) by the said Glenns Ferry Canal Company, Limited, during the period while it has the management of the said system; said system of rotation, however, to be approved by the State Engineer.

The sale or contract of water rights to a purchaser shall be a dedication of the water to the land to which the same is to be applied, and the water right so dedicated shall be a part of and shall relate to the water right belonging to the said system of canal.

## XI.

### MEASUREMENT OF WATER AND CHARGES FOR DELIVERY.

The party of the second part agrees to construct the said irrigation system so that water conducted through its canals may be available at points not to

exceed one-half mile, measured in a direct line, from each quarter section of land described in said segregations, and to be irrigated and reclaimed by water conducted through said canals. That it will construct and place in position, all headgates, flumes, weirs and other devices for the control and measurement of water in the main canals and in the main laterals, it being intended that the settlers shall, under the direction of the Chief Engineer of the second party, build and furnish one gate or measuring device for his use, but that all other gates, weirs and measuring devices in the main canals, main or subordinate laterals, shall be furnished and constructed by the second party. Plans for measuring devices, headgates, and weirs are to be approved by the State Engineer.

No charge shall be made to the purchaser for the delivery of water for said lands, or lands adjacent thereto prior to the first day of April, 1909. For each succeeding year thereafter, while the second party retains the control of the said Glenns Ferry Canal Company, Limited, said company may charge and assess the purchasers of water rights in said irrigation system not to exceed the sum of sixty cents (60c) per acre for each acre of land for which a water right has been purchased, the same to become due at the beginning of each irrigation season, if the water is ready for delivery at the beginning of such seasons, and such water must be available for use at a point within one-half mile of each quarter section of such land. If the sum so raised shall be in-

sufficient for the purpose of maintaining, operating and keeping in repair the said system and paying the expenses for the management thereof, then the said party of the second part will furnish all the additional funds necessary to supply such deficiency.

A main lateral, within the meaning of this contract, is a lateral taken from the main line of the canal. A subordinate lateral, within the meaning of this contract, is a lateral built for the purpose of conducting water from a main lateral to a point within one-half mile of the place of intended use. A coulee or draw used as a main lateral or a subordinate lateral shall also be included within these terms.

## XII.

### INCREASE OF CAPACITY OF CANAL.

The party of the second part shall be entitled at any time within three years from the date hereof to increase the appropriation of water from the Malad River at the point of diversion herein described, and to increase the capacity of the said canal or any laterals thereof, and to use the same so enlarged or increased for the purpose of carrying any water belonging to the said party of the second part under present appropriations or such additional appropriations; provided, however, that such use shall be allowed only upon the making of such reasonable arrangements as to expenses of care and maintenance of the canal and irrigation system as may be agreed upon between the said party of the second part and



the said Board of Land Commissioners of the State of Idaho, or the said corporation to be formed as hereinafter provided. Any rights acquired by the party of the second part under the provisions of this section shall be at all times held, used and employed subject and subordinate to the rights of the purchasers of shares of stock or water rights to the use of water for irrigation purposes, as provided in this contract; and there shall be conveyed and transferred to the said Glenns Ferry Canal Company, Limited, out of the water appropriations of second party, so much of such appropriations as may be necessary to deliver to each and every purchaser of water rights or shares of stock in said Glenns Ferry Canal Company, Limited, the amount of water required to be delivered under the several contracts of purchase made with second party when measured at the points of measurements as hereinbefore fixed, and the balance of such appropriations is reserved to second party to be utilized or sold for power or other purposes.

### XIII.

#### COMPLETION OF CANAL.

Said party of the second part agrees to immediately commence the work of constructing the said canal and irrigation system and to continue to prosecute such work of construction diligently and continuously to completion, unless temporarily interrupted by snow, rain or cold weather, and there shall be no cessation of work for more than sixty days, without the consent of the Board, and the said irri-

gation works shall be entirely completed within three years from this date, and at least one-third of the construction work shall be completed within one year from the date hereof, and at least two-thirds of such construction work shall be completed within two years from the date hereof.

It is understood that changes and alterations in the plans and specifications heretofore prepared and filed, may be made at any time, with the consent of the State Board of Land Commissioners.

#### XIV.

#### FORFEITURE.

The said party of the second part agrees, upon failure on its part to begin the construction of said canal within the time specified in this contract, or upon failure to proceed with or prosecute such work of construction as in this contract provided, after receiving sixty days' notice from the State Board of Land Commissioners, that the portions of said canal which may have been constructed and any and all rights which the party of the second part may have in or to the said canal or irrigation system, shall be at once forfeited to the said party of the first part, the State of Idaho, and the said party of the first part, acting through its State Board of Land Commissioners, may declare all the right, title and interest of second party hereunder and in the said canal system forfeited and proceed to enforce the bond filed by second party, and take possession of the said canal and irrigation works and all the rights

which the said party of the second part may have acquired therein, in accordance with the provisions of the laws of the State of Idaho, and particularly section 13 of an Act approved March 2nd, 1899, Session Laws 1899, Page 287.

## XV.

### MORTGAGE.

The right, title and interest of the second party in the said works and irrigation system and in the said lands may be mortgaged, as provided by the said Act of Congress and the laws of the State of Idaho, hereinbefore referred to; the form of such mortgage to be approved by the Attorney General of Idaho.

## XVI.

### ESTIMATED COST.

The estimated cost of the proposed irrigation works is five hundred thousand (\$500,000.00) dollars, and the price at which water rights are fixed herein and for which liens are authorized against the separate legal subdivisions of land herein described, is deemed necessary in order to pay the costs and expenses of reclamation and interest thereon.

## XVII.

### EXISTING LAWS PART OF CONTRACT.

It is hereby understood and expressly agreed that this contract is made and entered into by virtue of the provisions and subject to all of the conditions of an Act of Congress, commonly known as the Carey Act, approved August 18th, 1894, and the acts amen-

datory thereof, and the laws of the State of Idaho accepting the terms and provisions of the said Carey Act, and the contract between the United States and the State of Idaho segregating from the public domain the lands herein designated as Carey Act lands, and that such laws and contract are as much a part of this contract as if specifically herein set forth; and the said agreement of May 6th, 1904, between first party and the said Glenns Ferry Land & Irrigation Company, Limited, and the said agreement of January 22nd, 1908, between the parties hereto, are superseded by this agreement, and the parties hereto shall from henceforth be governed and their respective rights and equities be determined by this agreement and by said contract between the United States Government and the State of Idaho, and by the laws of the State of Idaho and Acts of Congress above mentioned. This agreement, however, shall not be construed or understood as destroying any right or property gained or acquired by the said Glenns Ferry Land & Irrigation Company, Limited, under the said agreement of May 6th, 1904, or by the party of the second part under the said agreement of January 22nd, 1908, but it is intended to preserve and protect all such rights and property and to create other rights in addition thereto in second party.

### XVIII.

#### HIGHWAYS.

Entries of land are understood to be made subject to a right of way, without compensation to the



entryman, for roads upon all exterior section lines and also upon all half-section lines, which may be designated by the Board of County Commissioners, as may be provided by law; and such entries shall likewise be subject to such rights of way for such other roads, not exceeding fifty (50) feet in width, as second party may deem necessary; subject, however, to the approval of the State Board of Land Commissioners.

## XIX.

### DELIVERY OF WATER TO USERS.

It is agreed that the said Glenns Ferry Canal Company, Limited, shall not deliver water to or permit the use thereof from said irrigation system by persons who have not purchased water rights or who are not holders of stock in said Glenns Ferry Canal Company, Limited, or who are not otherwise entitled thereto under this contract.

## XX.

### WATER SUPPLY FOR CITIES AND TOWNS.

It is understood and agreed that so much water as may be necessary for the use of cities and towns and the inhabitants thereof, which cities and towns must necessarily take their water supply from said system of canals, shall be furnished from said canal system to said cities and towns and the inhabitants thereof, upon such terms of sale or rental as may be agreed upon by the party of the second part and the said cities and towns, or the owners of the lands upon which the same are established, or the residents

therein. Said cities and towns must contribute to the maintenance and support of said irrigation system in proportion to the amount of water used by them, and shares of stock of the Glenns Ferry Canal Company, Limited, shall be issued for the amounts of water represented by said use to the trustees of any village or the mayor of any city, in trust, for the use and benefit of the towns and cities and the inhabitants thereof.

## XXI.

### AMENDMENTS.

This contract may be altered and amended by second party with the consent of the first party, for the purpose of carrying out the objects of the contract, and for the purpose of meeting any conditions now unforeseen.

## XXII.

### BOND.

The said second party agrees to furnish a good and sufficient bond for the faithful performance of the within contract.

*This Agreement* is executed in duplicate, one copy thereof to be filed with the party of the first part, and the other to be delivered to the party of the second part.

*In Witness Whereof*, the said party of the first part, the State of Idaho, has caused this agreement to be signed by its Governor and President of the State Board of Land Commissioners of the State of Idaho, and the said party of the second part has

hereunto caused its corporate name to be subscribed by its President and its corporate seal affixed, attested by its Secretary, the day and year first above written.

For the STATE OF IDAHO,

By F. R. Gooding,

Governor and President of the State Board of Land Commissioners.

Attest: M. I. Church, Secretary.

KINGS HILL IRRIGATION & POWER COMPANY,

By Chas. H. Hammett, President.

Attest: O. O. Haga, Secretary.

(Seal.)

# EXHIBIT "A"

## LIST OF CAREY LANDS TO BE IRRIGATED BY THE GLENNS FERRY CANAL.

Township 6, South of Range 13 East, B. M.

(Surveyed.)

Subdivision	Section	Acres	Total Acreage
NW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub> .....	35	40	40
N <sup>1</sup> / <sub>2</sub> NE <sup>1</sup> / <sub>4</sub> .....	34	80	
Lot 1.....	34	30.20	110.20
Lot 3.....	27	2.54	2.54
Lots 4, 5, 6 and 7....	28	128.20	128.20
Lots 4 and 5.....	21	30.24	30.24
Lots 4, 6, 7 and 8....	20	111.59	
SE <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub> .....	20	40	
E <sup>1</sup> / <sub>2</sub> NW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub> ...	20	20	

NE $\frac{1}{4}$ SW $\frac{1}{4}$ .....	20	40	211.59
Lots 4 and 5.....	17	47.09	47.09
Lots 5 and 6.....	18	63	
NE $\frac{1}{4}$ NW $\frac{1}{4}$ .....	18	40	
NE $\frac{1}{4}$ SE $\frac{1}{4}$ .....	18	40	143
Lots 3, 4 and 5.....	7	94.24	94.24
			<hr/> 807.10

Township 6, South of Range 12 East, B. M.  
(Unsurveyed.)

Subdivision	Section	Acres	Total Acreage
N $\frac{1}{2}$ N $\frac{1}{2}$ .....	13	160	160
S $\frac{1}{2}$ .....	12	320	320
N $\frac{1}{2}$ .....	14	320	320
S $\frac{1}{2}$ .....	11	320	320
N $\frac{1}{2}$ .....	15	320	320
S $\frac{1}{2}$ .....	10	320	320
S $\frac{1}{2}$ .....	9	320	320
N $\frac{1}{2}$ N $\frac{1}{2}$ .....	16	160	
SE $\frac{1}{4}$ NE $\frac{1}{4}$ .....	16	40	200
S $\frac{1}{2}$ S $\frac{1}{2}$ .....	8	160	
S $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ .....	8	40	200
N $\frac{1}{2}$ .....	18	320	320
S $\frac{1}{2}$ .....	7	320	320
			<hr/> 3,120

Township 6, South of Range 11 East, B. M.  
(Unsurveyed.)

Subdivision	Section	Acres	Total Acreage
S $\frac{1}{2}$ S $\frac{1}{2}$ .....	12	160	160
N $\frac{1}{2}$ .....	13	320	320



S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ .....	11	40	40
N $\frac{1}{2}$ .....	14	320	
N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ .....	14	20	
N $\frac{1}{2}$ SW $\frac{1}{4}$ .....	14	80	
N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ .....	14	20	440
SE $\frac{1}{4}$ .....	15	160	
S $\frac{1}{2}$ SW $\frac{1}{4}$ .....	15	80	240
N $\frac{1}{2}$ NW $\frac{1}{4}$ .....	16	80	80
SW $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$ .	9	240	240
E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ .....	8	40	40
W $\frac{1}{2}$ .....	4	320	320
N $\frac{1}{2}$ .....	5	320	
E $\frac{1}{2}$ SE $\frac{1}{4}$ .....	5	80	
NW $\frac{1}{4}$ SW $\frac{1}{4}$ .....	5	40	440
N $\frac{1}{2}$ and N $\frac{1}{2}$ S $\frac{1}{2}$ .....	6	480	480
			<hr/>
			2,800

Township 5, South of Range 11 East, B. M.

(Unsurveyed.)

Subdivision	Section	Acres	Total Acreage
W $\frac{1}{2}$ SW $\frac{1}{4}$ .....	33	80	80
All of.....	32	640	640
S $\frac{1}{2}$ .....	31	320	
S $\frac{1}{2}$ N $\frac{1}{2}$ .....	31	160	
NE $\frac{1}{4}$ NE $\frac{1}{4}$ .....	31	40	520
E $\frac{1}{2}$ SE $\frac{1}{4}$ .....	30	80	
NE $\frac{1}{4}$ .....	30	160	
NE $\frac{1}{4}$ NW $\frac{1}{4}$ .....	30	40	280
S $\frac{1}{2}$ .....	29	320	
S $\frac{1}{2}$ NW $\frac{1}{4}$ .....	29	80	400

All of.....	19	640	640
All of.....	18	640	640
W $\frac{1}{2}$ NW $\frac{1}{4}$ .....	20	80	80
W $\frac{1}{2}$ .....	17	320	320
S $\frac{1}{2}$ .....	7	320	320
SW $\frac{1}{4}$ SW $\frac{1}{4}$ .....	8	40	40
			3,960

Township 5, South of Range 10 East, B. M.  
(Surveyed.)

Subdivision	Section	Acres	Total Acreage
Lots 5, 6 and 7.....	12	122.04	122.04
Lots 1 and 2.....	13	79.64	
E $\frac{1}{2}$ .....	13	320	
SW $\frac{1}{4}$ .....	13	160	
SE $\frac{1}{4}$ NW $\frac{1}{4}$ .....	13	40	599.64
Lots 6, 7 and 8.....	14	99.02	
S $\frac{1}{2}$ SE $\frac{1}{4}$ .....	14	80	
NE $\frac{1}{4}$ SE $\frac{1}{4}$ .....	14	40	219.02
Lot 1.....	23	29.38	
Lot 2.....	23	39.50	
Lot 3.....	23	29.94	
NE $\frac{1}{4}$ SW $\frac{1}{4}$ .....	23	40	
S $\frac{1}{2}$ SW $\frac{1}{4}$ .....	23	80	
E $\frac{1}{2}$ .....	23	320	538.82
All of 24.....	24	640	640
NW $\frac{1}{4}$ .....	25	160	
W $\frac{1}{2}$ NE $\frac{1}{4}$ .....	25	80	240
N $\frac{1}{2}$ NE $\frac{1}{4}$ .....	26	80	
N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ .....	26	20	100

SE $\frac{1}{4}$ NE $\frac{1}{4}$ .....	36	40	
NE $\frac{1}{4}$ SE $\frac{1}{4}$ .....	36	40	
E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ .....	36	20	100
Lot 6.....	22	12	
Lot 7.....	22	33.10	
Lot 8.....	22	39.70	
Lot 9.....	22	28.80	
Lot 10.....	22	13.80	
Lot 11.....	22	37.73	165.13

Township 5, South of Range 10 East, B. M.

(Surveyed.)—Continued.

Lot 5.....	21	41.50	
Lot 6.....	21	45.40	
Lot 7.....	21	10.60	97.50
Lot 2.....	28	32.90	
Lot 1.....	28	37.27	
Lot 3.....	28	35.20	
Lot 4.....	28	35.40	
NE $\frac{1}{4}$ NE $\frac{1}{4}$ .....	28	40	
S $\frac{1}{2}$ NE $\frac{1}{4}$ .....	28	80	
SE $\frac{1}{4}$ .....	28	160	420.77
Lot 1.....	33	28.80	
NE $\frac{1}{4}$ NW $\frac{1}{4}$ .....	33	40	
S $\frac{1}{2}$ NW $\frac{1}{4}$ .....	33	80	
NE $\frac{1}{4}$ .....	33	160	308.80
W $\frac{1}{2}$ NW $\frac{1}{4}$ .....	34	80	80
Lot 9.....	32	30.90	30.90
NW $\frac{1}{4}$ NE $\frac{1}{4}$ .....	27	40	
NW $\frac{1}{4}$ .....	27	160	200

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3,862.62

Township 6, South of Range 10 East, B. M.  
(Unsurveyed.)

Subdivision	Section	Acres	Total Acreage
N1½ NE¼ . . . . .	1	80	80

State of Idaho,  
County of Ada—ss.

I, N. Jenness, Register of the State Board of Land Commissioners of the State of Idaho, do hereby certify that the foregoing is a true and correct copy of the contract of the Kings Hill Irrigation & Power Company, as same appears on file in this office.

*In Witness Whereof* I have hereunto set my hand and affixed hereto the official seal of the said Board this 5th day of July, 1911.

N. JENNESS, Register.

(Seal)

By H. Q. Hale, Chief Clerk.

## EXHIBIT F.

### CLAIM OF LIEN.

PACIFIC COAST PIPE COMPANY,

Claimant,

vs.

KINGS HILL IRRIGATION & POWER COMPANY,

Defendant.

Notice is hereby given that the Pacific Coast Pipe Company, a corporation organized and existing under the laws of the State of Washington with its principal place of business at Seattle in said state, hereby



claims a lien upon that certain ditch, flume and canal commonly known as the "Kings Hill Canal," and the right of way therefor located in Lincoln, Twin Falls, Owyhee and Elmore Counties, State of Idaho, together with all appurtenances thereunto belonging or in anywise appurtenanting and including all main and subordinate laterals, dams, headgates, rights of way, water rights, etc. Said canal is owned and reputed to be owned by the Kings Hill Irrigation and Power Company, a corporation organized and existing under the laws of the State of Nevada and doing business in the State of Idaho, which said canal is more particularly described as follows, to-wit:

The intake of said canal is at a point on the right bank of the Malad River in Lincoln County, State of Idaho, near the North and South line between the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  and the NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Sec. 35, Twp. 6, South of Range 13 East, Boise base and meridian; said point being approximately South 75 degrees 22 minutes East 1,195.5 feet from the southeast corner of Section 27, said Township and Range. From the said point of diversion the canal continues along the right bank of said river for a distance of about 5,600 feet to Snake River; thence across Snake River on a steel span bridge in an inverted syphon wooden pipe 1,400 feet to the south side of Snake River; thence running in a westerly direction along the south side of Snake River for a distance of about twenty miles to a point near the center of Section 5, Township 6, South of Range 11 East, B. M., which is the end of the main canal, from which point, the distribution system, consisting of main laterals

known as the Poison Basin Branch and Glenns Ferry Branch, together with subordinate laterals, extends on, over and across lands in Townships 5 and 6 South, Ranges 10 and 11 East, Boise Meridian.

This claim of lien is for the sum of ten thousand seventy - one and thirty - three hundredths (\$10,-071.33) dollars, together with interest to date of payment at the lawful rate of seven (7) per cent, per annum upon each and every of the several items for merchandise furnished as per statement hereto annexed, marked Schedule 1 and made a part thereof, from and after thirty (30) days from the date of said several items, less interest on the several credits appearing on said statement, on account of materials furnished by the claimant to, and at the instance of, the Kings Hill Irrigation & Power Company, the owner and reputed owner of said ditch, flume and canal, to be used in the construction and repair of the said ditch, flume and canal. Said materials were furnished to the said Kings Hill Irrigation & Power Company between the 13th day of July, 1909, and the 2nd day of July, 1910, on which said last named date, the claimant ceased to furnish materials for said ditch, flume and canal.

That claimant was and is an original contractor in the furnishing of said materials and ninety (90) days have not elapsed since it ceased to furnish materials for the construction and repair of said ditch, flume and canal.

That there remains a balance due claimant for said materials so furnished between said dates, after de-

ducting all just credits and offsets, the above named sum, with interest as above.

*Wherefore*, said claimant claims a lien upon said ditch, flume and canal in the sum of ten thousand seventy-one and thirty-three hundredths (\$10,-071.33) dollars, together with interest as above which interest accrued to the 1st day of August, 1910, amounted to \$434.16, making the total claim on August 1st, 1910, \$10,505.49.

PACIFIC COAST PIPE COMPANY,

By N. M. Ruick,

Agent and Attorney. Residence, Boise, Idaho, Attorney for Claimant.

### SCHEDULE 1.

### STATEMENT.

KINGS HILL IRRIGATION & POWER CO.,  
to PACIFIC COAST PIPE CO., Dr.

### TERMS CASH.

Interest will be charged after 30 days from date of invoice at 8 per cent. per annum.

#### 1909.

July 13	To Mdse.	\$ 152.48
July 17	To Mdse.	17.40
Aug. 12	To Mdse.	5,092.50
Oct. 23	To Mdse.	419.57
Oct. 23	To Mdse.	2,176.82

#### 1910.

Feb. 25	To Mdse.	654.50
Feb. 26	To Mdse.	725.41
Feb. 28	To Mdse.	902.48

Feb. 28	To Mdse.	982.83
Mch. 8	To Mdse.	169.20
May 18	To Mdse.	6.31
July 2	To Mdse.	744.53
July 2	To Mdse.	319.21
		<hr/>
		\$12,363.24

1909.

Aug. 14	Cr. by Freight	\$328.83
Aug. 14	Cr. by Freight	292.45
Aug. 14	Cr. by Freight	306.05
Aug. 20	Cr. by Freight	132.46
Sept. 10	Cr. by Cash	169.88
Dec. 20	Cr. by Freight	259.10

1910.

Mch. 5	Cr. by Freight	198.00	
Mch. 28	Cr. by Freight	209.14	
Mch. 28	Cr. by Freight	198.00	
Mch. 28	Cr. by Freight	198.00	2291.91
			<hr/>
			\$10,071.33

State of Idaho,

County of Ada—ss.

N. M. Ruick, being first duly sworn, on oath says that he is agent and attorney for the Pacific Coast Pipe Company, the claimant named in the foregoing claim of lien; that he has read the same and knows the contents thereof and believes the same to be just.

N. M. RUICK.

Subscribed and sworn to before me this 2d day of August, 1910.

(Seal)

B. W. Oppenheim,  
Notary Public, Ada County, Idaho.



## EXHIBIT G.

ARTICLES OF AGREEMENT BETWEEN E. A. HITCHCOCK, SECRETARY OF THE INTERIOR, FOR AND ON BEHALF OF THE UNITED STATES OF AMERICA, AND JOHN T. MORRISON, GOVERNOR, FOR AND ON BEHALF OF THE STATE OF IDAHO.

These articles of agreement, made and entered into this 30th of March, A. D. 1904, by and between E. A. Hitchcock, Secretary of the Interior, for and on behalf of the United States of America, party of the first part, and John T. Morrison, Governor, for and on behalf of the State of Idaho, party of the second part.

*Witnesseth*, That in consideration of the stipulations and agreements hereinafter made, and of the fact that said State has under the provisions of section 4 of the act of Congress approved August 18, 1894, of the act of Congress approved June 11, 1896, and of the act of Congress approved March 3, 1901, through J. B. Lafferty, its proper officer, thereunto duly authorized, presented its proper application for certain lands situated within said State and alleged to be desert in character, and particularly described as follows, to-wit:

## LIST NO. 7.

In Township 6, South of Range 13 East, B. M.

(Surveyed.)

Lot 1..... Section 34, 30.20 acres  
Lot 3..... Section 27, 2.54 acres

Lot 4.....	Section 28, 34.43 acres
Lot 5.....	Section 28, 35.40 acres
Lot 6.....	Section 28, 48.10 acres
Lot 7.....	Section 28, 44.70 acres
Lot 4.....	Section 21, 14.04 acres
Lot 5.....	Section 21, 15.20 acres
Lot 4.....	Section 20, 22.80 acres
Lot 6.....	Section 20, 25.50 acres
Lot 7.....	Section 20, 22.00 acres
Lot 8.....	Section 20, 41.29 acres
SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ ..	Section 20, 80.00 acres
Lot 4.....	Section 17, 47.82 acres
Lot 5.....	Section 17, 15.80 acres
Lot 5.....	Section 18, 46.90 acres
Lot 6.....	Section 18, 16.10 acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ ..	Section 18, 80.00 acres
Lot 3.....	Section 7, 19.65 acres
Lot 4.....	Section 7, 36.64 acres
Lot 5.....	Section 7, 37.95 acres

Township 6, South of Range 12 East, B. M.

(Unsurveyed.)

N $\frac{1}{2}$ of NE $\frac{1}{4}$ of Section 13.....	80.00 acres
N $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 13.....	80.00 acres
That part of Section 12 south of Snake River, estimated area.....	320.00 acres
N $\frac{1}{2}$ of Section 14.....	320.00 acres
That part of Sec. 11 south of Snake River, estimated area.....	320.00 acres
N $\frac{1}{2}$ of Section 15.....	320.00 acres
That part of Sec. 10 south of Snake River, estimated area.....	320.00 acres

That part of Sec. 9 south of Snake

River, estimated area . . . . . 320.00 acres

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2,797.06

(Township 6. South of Range 12 East, B. M., Continued.) 2797.06 acres.

That part of Sec. 8 south of Snake

River, estimated area . . . . . 200.00 acres

That part of Sec. 7, South of Snake

N $\frac{1}{2}$  of Section 18 . . . . . 320. acres

In Township 6. South of Range 11 East, B. M.

(Unsurveyed.)

That part of Sec. 12 south of Snake

River, estimated area . . . . . 160.00 acres

N $\frac{1}{2}$  of Section 13 . . . . . 320.00 acres

That part of Sec. 11 south of Snake

River, estimated area . . . . . 20.00 acres

That part of the NW $\frac{1}{4}$  of Sec. 14

South of Snake River, estimated  
area . . . . . 80.00 acres

That part of the NE $\frac{1}{4}$  of Sec. 14

south of Snake River, estimated  
area . . . . . 160.00 acres

N $\frac{1}{2}$  of SW $\frac{1}{4}$  of Section 14 . . . . . 80.00 acres

That part of Sec. 15 south of Snake

River, estimated area . . . . . 160.00 acres

That part of Sec. 9 west of Snake

River, estimated area . . . . . 200.00 acres

That part of Sec. 4 west of Snake

River, estimated area . . . . . 280.00 acres

N $\frac{1}{2}$  of Section 5 . . . . . 320.00 acres

E $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 5.....	80.00	acres
NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 5.....	40.00	acres
N $\frac{1}{2}$ of Section 6.....	320.00	acres
N $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 6.....	80.00	acres
N $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 6.....	80.00	acres

In Township 5, South of Range 11 East, B. M.

(Unsurveyed.)

That part of Sec. 33 west of Snake

River, estimated area..... 100.00 acres

That part of Sec. 32 west of Snake

River, estimated area..... 620.00 acres

S $\frac{1}{2}$  of Section 31..... 320.00 acres

S $\frac{1}{2}$  of NW $\frac{1}{4}$  of Section 31..... 80.00 acres

S $\frac{1}{2}$  of NE $\frac{1}{4}$  of Section 31..... 80.00 acres

NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 31..... 40.00 acres

E $\frac{1}{2}$  of SE $\frac{1}{4}$  of Section 30..... 80.00 acres

NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 30..... 40.00 acres

That part of NE $\frac{1}{4}$  of Sec. 30 west of

SNAKE River, estimated area..... 160.00 acres

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7,537.06

(Township 5, South of Range 11 East, continued.)

That part of Sec. 29 west of Snake

River, estimated area..... 320.00 acres

That part of Sec. 19 west of Snake

River, estimated area..... 640.00 acres

All of Section 18, estimated area.... 640.00 acres

That part of Sec. 20 west of Snake

River, estimated area..... 80.00 acres

That part of Sec. 17 west of Snake

River, estimated area..... 320.00 acres



That part of Sec. 8 west and south of

Snake River, estimated area..... 40.00 acres

That part of Sec. 7 south of Snake

River, estimated area..... 200.00 acres

In Township 5, South of Range 10 East, B. M.

(Surveyed.)

Lot 5.....	Section 12,	21.08 acres
Lot 6.....	Section 12,	50.30 acres
Lot 1.....	Section 13,	42.86 acres
NW $\frac{1}{4}$ NE $\frac{1}{4}$ .....	Section 13,	40.00 acres
Lot 8.....	Section 14,	22.19 acres
E $\frac{1}{2}$ of SE $\frac{1}{4}$ .....	Section 14,	80.00 acres
S $\frac{1}{2}$ of SW $\frac{1}{4}$ .....	Section 23,	80.00 acres
E $\frac{1}{2}$ .....	Section 23,	320.00 acres
S $\frac{1}{2}$ and NE $\frac{1}{4}$ .....	Section 24,	480.00 acres
S $\frac{1}{2}$ of NW $\frac{1}{4}$ .....	Section 24,	80.00 acres
NW $\frac{1}{4}$ and W $\frac{1}{2}$ of NE $\frac{1}{4}$ ..	Section 25,	240.00 acres
N $\frac{1}{2}$ of NE $\frac{1}{4}$ .....	Section 26,	80.00 acres
Lot 9.....	Section 22,	28.80 acres
Lot 10.....	Section 22,	13.80 acres
Lot 11.....	Section 22,	37.73 acres
NW $\frac{1}{4}$ and NW $\frac{1}{2}$ of NE $\frac{1}{4}$ .	Section 27,	200.00 acres
Lot 2.....	Section 28,	32.90 acres
Lot 3.....	Section 28,	35.20 acres
NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ ....	Section 28,	120.00 acres
SE $\frac{1}{4}$ .....	Section 28,	160.00 acres
NE $\frac{1}{4}$ .....	Section 33,	160.00 acres
		<hr/>
		12,108.92 acres

(Township 5, South of Range 10 East, B. M., con.)

SW $\frac{1}{4}$  ..... Section 33, 160 acres

W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ .	Section 33,	120.00	acres
W $\frac{1}{2}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$	Section 34,	120.00	acres
Lot 8.....	Section 32,	56.70	acres
E $\frac{1}{2}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$ ..	Section 32,	120.00	acres

In Township 6, South of Range 10 East, B. M.

(Unsurveyed.)

N $\frac{1}{2}$ of NE $\frac{1}{4}$ , Section 1, estimated area .....	80.00	acres
SW $\frac{1}{4}$ of SW $\frac{1}{4}$ , Section 3.....	40.00	acres
S $\frac{1}{2}$ of Section 4.....	320.00	acres
NW $\frac{1}{4}$ of Section 4.....	160.00	acres
S $\frac{1}{2}$ of NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 4.....	120.00	acres
All of Section 9.....	640.00	acres
W $\frac{1}{2}$ of NW $\frac{1}{4}$ and W $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 10.....	160.00	acres
SW $\frac{1}{4}$ of Section 15.....	160.00	acres
W $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 15.....	80.00	acres
E $\frac{1}{2}$ of NE $\frac{1}{4}$ and NE $\frac{1}{2}$ of SE $\frac{1}{4}$ Sec- tion 17.....	120.00	acres
N $\frac{1}{2}$ of NE $\frac{1}{4}$ and N $\frac{1}{2}$ of NW $\frac{1}{4}$ Sec- tion 8.....	160.00	acres
N $\frac{1}{2}$ of NE $\frac{1}{4}$ and N $\frac{1}{2}$ of NW $\frac{1}{4}$ Sec- tion 7 .....	160.00	acres
That part of Sec. 5 South of Snake River, estimated area.....	640.00	acres
S $\frac{1}{2}$ of Section 6, estimated area....	320.00	acres
S $\frac{1}{2}$ of NE $\frac{1}{4}$ of Section 6.....	80.00	acres
That part of NW $\frac{1}{4}$ of Sec. 6 south of Snake River, estimated area.....	120.00	acres

In Township 6, South of Range 9 East, B. M.  
(Unsurveyed.)

That part of Sec. 1 south of Snake

River, estimated area.....	540.00	acres
N $\frac{1}{2}$ of NE $\frac{1}{4}$ of Sec. 12.....	80.00	acres
NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 12.....	40.00	acres
NE $\frac{1}{4}$ of Sec. 2.....	160.00	acres
N $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec. 2.....	80.00	acres
	<hr/>	
	16,945.62	acres

(Township 6, South of Range 9 East, B. M., Con.)

NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 2.....	40.00	acres
N $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 2.....	80.00	acres
SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 2.....	40.00	acres

In Township 5, South of Range 9 East, B. M.  
(Surveyed.)

N $\frac{1}{2}$ of SE $\frac{1}{4}$ .....	Section 34,	80.00	acres
SE $\frac{1}{4}$ SE $\frac{1}{4}$ .....	Section 34,	40.00	acres
Lot 1.....	Section 35,	30.80	acres
Lot 2.....	Section 35,	30.30	acres
Lot 3.....	Section 35,	31.20	acres
Lot 4.....	Section 35,	28.80	acres
E $\frac{1}{2}$ NW $\frac{1}{4}$ .....	Section 35,	80.00	acres
SW $\frac{1}{4}$ NW $\frac{1}{4}$ .....	Section 35,	40.00	acres
SW $\frac{1}{4}$ .....	Section 35,	160.00	acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$ .....	Section 35,	40.00	acres

Total number of acres, estimated. 17,666.72 acres  
and has filed a map of said lands, and exhibited a  
plan showing the mode by which it is proposed that

said lands shall be irrigated and reclaimed, and the course of the water to be used for that purpose, the said party of the first part contracts and agrees, and, by and with the consent and approval of Theodore Roosevelt, President thereof, hereby binds the United States of America to donate, grant and patent to said State, or to its assigns, free from cost for survey or price, any particular tract or tracts of said lands, whenever an ample supply of water is actually furnished in a substantial ditch or canal or by artesian wells or reservoirs, to reclaim the same, in accordance with the provisions of said acts of Congress, and with the regulations issued thereunder, and with the terms of this contract, at any time within ten years from the date of approval of the said map of the lands.

It is further understood that said State shall not lease any of said lands or use or dispose of the same in any way whatever, except to secure their reclamation, cultivation, and settlement; and that in selling and disposing of them for that purpose the said State may sell or dispose of not more than 160 acres to any one person, and then only to bona fide settlers who are citizens of the United States, or who have declared their intention to become such citizens; and it is distinctly understood and fully agreed that all persons acquiring title to said lands from said State prior to the issuance of patent, as hereinafter mentioned, will take the same subject to all the requirements of said acts of Congress and to the terms of this contract, and shall show full com-



pliance therewith before they shall have any claim against the United States for a patent to said lands.

It is further understood and agreed that said State shall have full power, right, and authority to enact such laws, and from time to time make and enter such contracts and agreements, and to create and assume such obligations in relation to and concerning said lands as may be necessary to induce and cause such irrigation and reclamation thereof as is required by this contract and the said acts of Congress; but no such law, contract, or obligation shall in any way bind or obligate the United States to do or perform any act not clearly directed and set forth in this contract and said acts of Congress, and then only after the requirements of said acts and contract have been fully complied with.

Neither the approval of said application, map, plan, nor the segregation of said land by the Secretary of the Interior, nor anything in this contract, or in the said acts of Congress, shall be so construed as to give said State any interest whatever in any lands upon which, at the date of filing of the map and plan hereinbefore referred to, there may be an actual settlement by a bona fide settler, qualified under the public land laws to acquire title thereto.

It is further understood and agreed that as soon as an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of said lands, the said State, or its assigns, may make proof thereof under and according to such rules and

regulations as may be prescribed therefor by the Secretary of the Interior, and as soon as such proof shall have been examined and found to be satisfactory, patents shall issue to said State, or to its assigns, for the tracts included in said proof.

The said State shall, out of the money arising from its disposal of said lands, first reimburse itself for any and all costs and expenditures incurred by it in irrigating and reclaiming said lands, or in assisting its assigns in so doing, and any surplus then remaining after the payment of the cost of such reclamation shall be held as a trust fund to be applied to the reclamation of other desert lands within said State.

This contract is executed in duplicate, one copy of which shall be placed of record and remain on file with the Commissioner of the General Land Office, and the other shall be placed of record and remain on file with the proper officer of said State, and it shall be the duty of said State to cause a copy thereof, together with a copy of all rules and regulations issued thereunder or under said acts of Congress, to be spread upon the deed records of each of the counties in said state in which any of said lands shall be situated.

In testimony whereof, the said parties have hereunto set their hands, the day and year first herein written.

E. A. HITCHCOCK,  
Secretary of the Interior.  
STATE OF IDAHO,

By Jno. T. Morrison, Governor.

APPROVAL.

TO ALL TO WHOM THESE PRESENTS SHALL  
COME, GREETING:

Know ye that I, Theodore Roosevelt, President of the United States of America, do hereby approve and ratify the attached contract and agreement, made and entered into on the 30th day of March, 1904, by and between E. A. Hitchcock, Secretary of the Interior, for and on behalf of the United States, and John T. Morrison, for and on behalf of the State of Idaho, under section 4 of the act of Congress approved August 18, 1894, the act approved June 11, 1896, and the act approved March 3, 1901.

THEODORE ROOSEVELT.

General Land Office,  
Railroad Division "F",  
March 19, 1904.

I hereby certify that this contract has been examined and compared with the duplicate, and found to be identical therewith, that the tracts therein described are duly indicated on the map and filed with said contract, and are shown by the records of this office to be vacant and unappropriated.

C. A. OBENCHAIN,  
Examiner.

Approved: S. S. Marr, Chief of Division.

Mineral Division,  
March 21, 1904.

This certifies that the surveyed tracts selected herein were not returned as mineral and are not in

townships containing mining claims of record in this office. No examination of the unsurveyed lands has been made.

C. A. HOLLINGSWORTH,  
Examiner.

Approved: W. G. Potter, Chief of Division.

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## EXHIBIT H.

*In the District Court of the Fourth Judicial District  
of the State of Idaho in and for the County  
of Elmore.*

PACIFIC COAST PIPE COMPANY, a Corporation,  
Plaintiff,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation,  
Defendant.

## COMPLAINT.

Plaintiff complains and alleges:

### 1.

That the plaintiff, Pacific Coast Pipe Company, during all the times hereinafter mentioned was and now is a corporation organized and existing under the law of the State of Washington with its principal place of business in Seattle in said State.

### 2.

That defendant, Kings Hill Irrigation & Power Company, at all times hereinafter mentioned was and now is a corporation organized and existing



under the laws of the State of Nevada and authorized to do business in the State of Idaho.

That the said Kings Hill Irrigation & Power Company, Defendant herein, now is and during the times hereinafter mentioned, was the owner of that certain ditch, flume and canal commonly known as the "Kings Hill Canal," and the right of way therefor located in Lincoln, Twin Falls, Owyhee and Elmore Counties, State of Idaho, together with all appurtenances thereunto belonging or in anywise appurtenanting and including all main and subordinate laterals, dams, headgates, rights of way, water rights, etc., which said canal is more particularly described as follows, to-wit:

The intake of said canal is at a point on the right bank of the Malad River in Lincoln County, State of Idaho, near the North and South line between the NW $\frac{1}{4}$  and NW $\frac{1}{4}$  and the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 35, Township 6 South of Range 13 East, Boise base and meridian; said point being approximately South 75 degrees 22 minutes East, 1,195.5 feet from the southeast corner of Section 27, said Township and Range. From the said point of diversion the canal continues along the right bank of said river for a distance of about 5,600 feet to Snake River; thence across Snake River on a steel span bridge in an inverted syphon wooden pipe, 1,400 feet to the south side of Snake River; thence running in a westerly direction along the south side of Snake River for a distance of about twenty miles to a point near the center of Section 5,

Township 6, South of Range 11 East, B. M., which is the end of the main canal, from which point, the distribution system, consisting of main laterals known as the Poison Basin Branch, King Hill Siphon, King Hill Branch, King Hill Bench Branch and Glenns Ferry Branch, together with subordinate laterals, extends on, over and across lands in Townships 5 and 6 South, Ranges 10 and 11 East, Boise Meridian.

That, between the 13th day of July, 1909, and the 2nd day of July, 1910, plaintiff, at the instance and request of defendant and as an original contractor, furnished, sold and delivered to defendant at Ballard Station, Seattle, State of Washington, certain materials to be used and which were actually used in the construction and repair of the said ditch, flume and canal hereinbefore described at the agreed price and of the reasonable value of twelve thousand three hundred sixty-three and twenty-four hundredths (\$12,363.24) dollars, upon the following terms, to-wit: Payment to be made in cash and, if not paid, interest to be charged after thirty (30) days from the date of invoice.

That a statement of which said materials so furnished, together with the dates upon which the same were furnished, being the dates of invoice, respectively, is as follows, to-wit:

1909.

July 13	To Mdse.	\$ 152.48
July 17	To Mdse.	17.40
Aug. 12	To Mdse.	5,092.50

Oct. 23	To Mdse.	419.57
Oct. 23	To Mdse.	2,176.82
1910.		
Feb. 25	To Mdse.	654.50
Feb. 26	To Mdse.	725.41
Feb. 28	To Mdse.	902.48
Feb. 28	To Mdse.	982.83
Mch. 8	To Mdse.	169.20
May 18	To Mdse.	6.31
July 2	To Mdse.	744.53
July 2	To Mdse.	319.20
		<hr/>
		\$12,363.24

## 5.

That no part of said amount has been paid save and except the sum of two thousand two hundred ninety-one and ninety-one hundredths (\$2,291.91) as follows, to-wit:

1909.

Aug. 14	Cr. by Freight	\$328.83
Aug. 14	Cr. by Freight	292.45
Aug. 14	Cr. by Freight	306.05
Aug. 20	Cr. by Freight	132.46
Sept. 10	Cr. by Cash	169.88
Dec. 20	Cr. by Freight	259.10

1910.

Mch. 5	Cr. by Freight	198.00
Mch. 28	Cr. by Freight	209.14
Mch. 28	Cr. by Freight	198.00
Mch. 28	Cr. by Freight	198.00
		<hr/>
		\$2,291.91

and that there is now due and owing to this plaintiff from defendant on account of materials so furnished, sold and delivered as aforesaid, the sum of ten thousand seventy-one and thirty-three hundredths (\$10,-071.33), together with interest to date of payment at the lawful rate of seven (7) per cent. per annum upon each and every of the several items for merchandise furnished, as per statement in Paragraph 4 of this complaint alleged, from and after thirty (30) days from the date of said several items less interest on the several credits hereinbefore in this paragraph set forth.

6.

That plaintiff ceased to furnish materials for said ditch, flume and canal, as aforesaid, on the 2nd day of July, 1910, and within ninety (90) days after it had ceased to furnish materials therefor, as aforesaid, and for the purpose of perfecting a lien on said ditch, flume and canal for the moneys so due on account of materials furnished, as aforesaid, plaintiff filed for record in the offices of the County Record-ers of Elmore and Owyhee Counties, State of Idaho, its claim of lien duly verified, which said claim was duly recorded on the records of said Elmore County on August 4, 1910, in Book 18 of Liens at Page 401 and on the records of said Owyhee County on August 5, 1910, in Book 3 of Leases and Liens, at Page 260; that a copy of said claim of lien is hereto attached, marked "Exhibit A", and made a part of this complaint.



7.

That plaintiff paid for the filing and recording of said claim of lien the sum of four and twenty hundredths (\$4.20) dollars, no part of which has been repaid to it.

8.

That the sum of one thousand (\$1,000) dollars is a reasonable fee to be allowed the plaintiff in this action for the prosecution of the same and the foreclosure of said lien, as provided by the laws of this state.

9.

That the said canal system cannot be divided into parts or sections and that it is necessary to sell the whole thereof, including the dams, ditches, flumes and laterals, rights of way and all the property and appurtenances connected therewith as hereinbefore set forth and described, to satisfy the claim of plaintiff.

*Wherefore*, plaintiff prays judgment against the defendant:

1.

For the sum of ten thousand seventy-one and thirty-three hundredths (\$10,071.33) dollars, together with interest to date of payment at the lawful rate of seven (7) per cent. per annum upon each and every of the several itmes for merchandise furnished, as per statement in paragraph 4 of this complaint alleged, from and after thirty (30) days from

the date of said several items less interest on the several credits hereinbefore in Paragraph 5 of this complaint set forth.

2.

For its costs and disbursements herein incurred, including the sum of four and twenty hundredths (\$4.20) dollars paid for filing and recording claim of lien and the sum of one thousand (\$1,000) dollars, attorneys' fees for the prosecution of this action.

3.

That it may be decreed that the said claim of lien so filed by plaintiff was and is a valid and subsisting lien against said canal system of defendant, together with the dams, ditches, canals, and laterals, rights of way and all the property and appurtenances connected therewith, as hereinbefore in Paragraph 3 of this complaint and in the said lien described, for the amount of said claim of lien less any payments which may, subsequent to the filing of this complaint, be made thereon.

4.

That it be decreed that the said canal system, as hereinbefore described, be sold under decree of this court and that the proceeds of such sale be first applied to the payment of the costs thereof and that the balance be applied to the payment of the amount due plaintiff under its said lien, together with costs, including the filing and recording of said claim of lien and attorney's fees.

5.

And for such other and further relief as to the court shall seem meet.

N. M. RUICK,  
B. W. OPPENHEIM,

Attorneys for Plaintiff. Residence, Boise, Idaho.

State of Idaho,  
County of Ada—ss.

N. M. Ruick, of said county, being duly sworn, says he is Attorney for the Plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge except as to matters which are therein stated to be on his information or belief and as to those matters he believes it to be true.

That the reason this verification is not made by the plaintiff is that it is a foreign corporation having no officer or officers or place of business resident or within the State of Idaho.

N. M. RUICK.

Subscribed and sworn to before me this.....  
day of October, 1910.

(Seal)

Frances E. Walker,  
Notary Public for Ada County, State of Idaho.

“See Exhibit F of this statement for copy of claim of lien.” Exhibit A to this complaint.

## EXHIBIT I.

*In the Circuit Court of the United States of America,  
in and for the District of Idaho, Southern Division.*

PACIFIC COAST PIPE COMPANY, a Corporation,  
Plaintiff,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation,  
Defendant.

## ANSWER.

The defendant, Kings Hill Irrigation & Power Company, now and at all times hereafter saving to itself all, and all manner of benefits, or exceptions, or otherwise, that can or may be had or taken to the many errors, incidents and imperfections in the bill contained for answer thereto, or so much thereof as this defendant is advised it is material or necessary for it to make answer to, answers and says:

## I.

Admits the allegations in Paragraph I.

## II.

Admits the allegations in Paragraph II.

## III.

Answering Paragraph III of said bill of complaint, denies that the said defendant, Kings Hill Irrigation & Power Company now is, or during the times or any of them, in said bill of complaint mentioned, was the owner of that certain ditch, flume and canal described in said bill of complaint, as "Kings Hill Ca-



nal," or any part thereof, or the right of way therefor described in said bill of complaint, or any part thereof, or the appurtenances mentioned in said bill of complaint as thereunto belonging, or any part thereof other than as conditioned upon and subject to that certain Act of the United States Congress commonly known as the Carey Act, and that said Act of the Legislature of Idaho accepting the benefits of said Carey Act and subject to the terms and provisions of that certain contract between the State of Idaho and the said defendant for the construction of the said Kings Hill Canal.

#### IV.

Answering Paragraph IV of said bill of complaint, this defendant admits that between the 13th day of July, 1909, and the 2d day of July, 1910, the said plaintiff, at the instance and request of this defendant, furnished, sold and delivered to said defendant the materials mentioned in said bill of complaint, but this defendant denies that such materials were furnished the said defendant at the instance or request of said defendant as an original or other contractor other than as owner, subject to the rights hereinafter set forth, and this defendant further denies that the said materials or any part thereof, were furnished by the said plaintiff to the said defendant upon any contract of any nature or kind other than the mere ordering of such materials from time to time as required by the defendant, on open, general and current account, without any agreement or understanding as to where, or when, or how, such materials, or

any part thereof, were to be used; and denies that if the payments for said materials were not made in cash interest was to be charged after thirty (30) days from the date of invoice, or any other time; and denies that there was ever at any time any understanding or agreement relative to the payment of interest on any deferred payments for such materials.

## V.

Answering the Paragraph V of said bill of complaint, this defendant admits payments made as therein stated, but this defendant denies that there is any interest due or owing said plaintiff at the rate of seven (7) per cent. or any other rate upon each or every or any of the several items of merchandise mentioned in said bill of complaint from or after thirty (30) days or any other number of days from the date of said several items, less interest on the several or any of the credits mentioned in said bill of complaint set forth in Paragraph V or otherwise, or at all.

## VI.

Answering Paragraph VI of said bill of complaint, this defendant admits that the plaintiff ceased furnishing such materials on the 2d day of July, 1910, but this defendant denies that within ninety (90) days after said plaintiff had so ceased to furnish such materials, or for the purpose of proving a lien on said ditch, flume or canal, or otherwise, for the money or any part thereof, due on account of said materials furnished, or otherwise, plaintiff filed for

record in the offices or either of them, of the County Recorders of Elmore or Owyhee Counties, State of Idaho, its claim of lien, duly verified or otherwise, as to the items of merchandise mentioned in Paragraph IV of Bill of Complaint, and alleged to have been furnished on July 13th, July 17th, August 12th, and October 23d, 1909, or any of them. But this defendant admits that the plaintiff filed for record in said Counties, the same as recorded, the claim of lien mentioned in said bill of complaint as therein alleged.

## VII.

Answering Paragraph VIII of said Bill of Complaint this defendant denies that One Thousand Dollars (\$1,000.00) or any other sum is a reasonable fee to be allowed the plaintiff in this action for the prosecution of the same or the foreclosure of the said alleged lien.

## IX.

Answering Paragraph IX of said Bill of Complaint, this defendant admits that this canal system could be divided in parts or sections, but denies that it is necessary to sell the whole or any part thereof, or any of the appurtenances connected therewith to satisfy the claim of plaintiff, or any part thereof.

And further answering plaintiff's Bill of Complaint, this defendant alleges:

That this defendant, by specific and current orders, at intervals as it required the materials set forth in Paragraph IV of said Bill of Complaint, re-

requested said plaintiff to ship the said materials to the said defendant, and the same were so shipped and used by the defendant in the construction of the structures mentioned in Paragraph III of said Bill of Complaint, which structures were erected under the terms and provisions of and subject to that certain Act of Congress of the United States commonly known as the Carey Act, and under the terms and provisions of and subject to that certain Act of the Legislature of the State of Idaho accepting the benefit of the said Carey Act, and pursuant to the terms and provisions of that certain written contract between the State of Idaho and this defendant, providing for the construction of the said canal system, pursuant to the terms and provisions of the said Acts and each of them, and not otherwise, and by reason thereof such canals, flumes and structures described in said Bill of Complaint are not subject to the claim of lien alleged in said plaintiff's Bill of Complaint, or any such claim of lien.

*Wherefore*, this defendant having fully answered, traversed and avoided or denied all the matters in said Bill of Complaint materially to be answered according to its best knowledge and belief, humbly prays this Honorable Court to enter its decree, and that this defendant be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

KINGS HILL IRRIGATION & POWER CO.

By C. H. Hammett, President.

RICHARDS & HAGA,

Solicitors and Counselors for Defendant.



United States of America,  
District of Idaho,—ss.

C. H. Hammett, being first duly sworn, says:  
That he is the President of the said Kings Hill Irrigation & Power Company, defendant herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be upon his information and belief, and as to those matters he believes it to be true.

C. H. HAMMETT.

*Subscribed and sworn to* before me this 12th day  
of April, A. D. 1911.

(Seal)

EDNA L. HICE,  
Notary Public.

Service of the foregoing answer accepted this  
. . . . . day of April, 1911.

N. M. RUICK,  
B. W. OPPENHEIM,  
Attorneys for Plaintiff.

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EXHIBIT J.

*In the Circuit Court of the United States of America,  
in and for the District of Idaho, Southern Division.*

PACIFIC COAST PIPE COMPANY, a Corporation,  
Plaintiff,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation,

Defendant.

*Replication.*

The replication of the above-named plaintiff to the answer of the above-named defendant.

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendants, for replication thereunto, sayeth that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly as in and by its said bill it has already prayed.

N. M. RUICK,

B. W. OPPENHEIM,

WAKEFIELD & WITHERSPOON,

Residence, Spokane, Washington; Attorneys for Plaintiff.

EXHIBIT K.

*In the Circuit Court of the United States, for the  
District of Idaho, Southern Division.*

PACIFIC COAST PIPE COMPANY, a Corporation,  
Plaintiff,

VS.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation,  
Defendant.

*No. 351. Decree.*

This cause came on to be heard at this term, and was argued by counsel; and, thereupon, upon consideration thereof:

It was ordered, adjudged and decreed that there is due and owing to plaintiff, Pacific Coast Pipe Company, by defendant, Kings Hill Irrigation & Power Company, the sum of Ten Thousand Seventy-one Dollars Thirty-three Cents (\$10,071.33), together with accrued interest thereon at the rate of Seven Per Cent (7%) per annum from October 2nd, 1910, said interest amounting to Eight Hundred Forty-five Dollars Ninety-nine Cents (\$845.99), together with the further sum of Four Dollars Twenty Cents (\$4.20) for filing and recording plaintiff's claim of lien herein, together with the further sum of Seven Hundred Fifty (\$750.00) Dollars attorneys' fees herein, or the sum total of Eleven Thousand Six Hundred Seventy-one Dollars Fifty-two Cents (\$11,671.52), and that plaintiff, Pacific Coast Pipe Company, have and recover of the defendant,

Kings Hill Irrigation & Power Company, the said sum of Eleven Thousand Six Hundred Seventy-one Dollars Fifty-two Cents (\$11,671.52), with interest until paid and the costs of this cause, for which execution will issue.

And it was further ordered, adjudged and decreed that the said sum of Eleven Thousand Six Hundred Seventy-one Dollars Fifty-two Cents (\$11,671.52), with accruing interest, is a lien upon that certain ditch, flume and canal and right of way therefor, described in the complaint herein and located in Lincoln, Twin Falls, Owyhee and Elmore Counties, State of Idaho, together with all appurtenances thereunto belonging or in anywise appurtenanting and including all main and subordinate laterals, dams, headgates, rights of way, water rights, etc., which canal is more particularly described as follows, to-wit:

The intake of said canal is at a point on the right bank of the Malad River in Lincoln County, State of Idaho, near the North and South line between the Northwest Quarter of the Northwest Quarter ( $NW\frac{1}{4}$  of  $NW\frac{1}{4}$ ) and the Northeast Quarter of the Northwest Quarter ( $NE\frac{1}{4}$  of  $NW\frac{1}{4}$ ) of Section Thirty-five (35), Township six (6) South, Range thirteen (13) East, Boise base and Meridian; said point being approximately South 75 deg. 22 min., East one thousand one hundred ninety-five and five-tenths (1195.5) feet from the Southeast corner of Section twenty-seven (27), said township and range. From the said point of diversion the canal continues



along the right bank of said river for a distance of about five thousand six hundred (5600) feet to Snake River; thence across Snake River on a steel span bridge in an inverted syphon wooden pipe one thousand four hundred (1400) feet to the South side of Snake River; thence running in a westerly direction along the South side of Snake River for a distance of about twenty miles to a point near the center of Section five (5), Township six (6) South, Range eleven (11) East, Boise Meridian, which is the end of the main canal, from which point the distribution system, consisting of main laterals known as the Poison Basin Branch, Kings Hill Syphon, Kings Hill Branch, King Hill Bench Branch and Glenns Ferry Branch, together with subordinate laterals, extends on, over and across lands in Townships five (5) and six (6) South, Ranges ten (10) and eleven (11) East, Boise Meridian, not including or covering what is known as the "Craster Flat" unit or lateral.

And it was further ordered, adjudged and decreed that, if said sum of money with accruing interest and the costs of this cause are not paid or caused to be paid by the defendant, Kings Hill Irrigation & Power Company, within ninety days from the entry of this decree, then R. M. McCracken, Special Master, shall sell the property hereinbefore described, to satisfy plaintiff's lien, to the highest bidder for cash at public auction at the door of the Court House of Owyhee County, State of Idaho, in the Town of Silver City, in said Owyhee County,

State of Idaho, the county in which the greater part of said property is located.

That thirty days' notice of such proposed sale, giving the time and place thereof and a description of the property to be sold, shall be given by said Special Master by advertisement once a week for four weeks prior to such sale in the Owyhee Nugget, a newspaper printed, regularly issued and having general circulation in Owyhee County, State of Idaho, and in the Shoshone Journal, a newspaper printed, regularly issued and having general circulation in Lincoln County, said state, in both of which counties a portion of said property is situated.

And further that the Special Master making such sale may, either personally or by some person to be designated by him to act in his name, and by his authority, adjourn the sale from time to time without further advertisement, but only on the request of the plaintiff or its attorneys or by order of the court or judge thereof.

That the plaintiff may become a purchaser at such sale.

That said Special Master, after the time allowed by law for redemption, execute a deed to the purchaser or purchasers of said premises on said sale.

That said Special Master, out of said proceeds, retain his fees, disbursements and commission on said sale and pay to plaintiff, or its attorneys, out of said proceeds its costs in this suit and the monies found to be a lien upon said premises as hereinbefore de-

creed, with interest thereon from this date at the rate of seven (7%) per cent per annum, or so much thereof as said proceeds of sale will pay for the same.

That the defendant and all persons claiming or to claim from or under it be forever barred and foreclosed of and from all equity of redemption and claim in and to said premises and every part thereof, from and after the delivery of said Special Master's deed.

That the purchaser or purchasers of said premises at such sale be let into possession thereof and that the defendant in possession of said premises or any part thereof, or any person who, since the commencement of this action, comes into possession of it, deliver possession thereof to such purchaser or purchasers on production of the Special Master's deed for such premises or any part thereof.

And it was further ordered, adjudged and decreed that if the monies arising from the said sale shall be insufficient to pay the amount so found due to the plaintiff, as above states, with interest and costs and expenses of sale, as aforesaid, the Special Master shall specify the amount of such deficiency and balance due to plaintiff in his return of said sale, and that on the coming in and filing of said return the Clerk of this court docket a judgment for such balance against the defendant, Kings Hill Irrigation & Power Company, and that the said defendant pay to the said plaintiff the amount of such deficiency and judgment, with interest thereon at the rate of seven per cent per annum from the date of said last

mentioned return and judgment and that the plaintiff have execution therefor.

It was further ordered that R. M. McCracken be and he hereby is designated and appointed a Special Master to make the sale hereby ordered and decreed and to execute and deliver a deed of conveyance of the property so to be sold, to the purchaser or purchasers thereof, on the order of the court or a judge thereof confirming such sale, the court, however, reserving the right to appoint, in term time or at chambers, another person such Special Master with like powers, in case of the death or disability to act of the Special Master hereby designated, or in case of his resignation or failure to act or removal by the court.

Done this 14th day of December, 1911.

FRANK S. DIETRICH,  
District Judge.

Costs taxed at \$36.45.

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EXHIBIT L.

*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

PACIFIC COAST PIPE COMPANY, a Corporation,  
Plaintiff,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation,

Defendant.



*Order of Sale.*

*The President of the United States:*

To R. M. McCracken, Special Master in Chancery,  
*Greeting:*

*Whereas*, Pacific Coast Pipe Company, a corporation, on the 14th day of December, 1911, recovered a judgment and decree against Kings Hill Irrigation & Power Company, a corporation, in an action wherein the said Pacific Coast Pipe Company, a corporation, is plaintiff and the said Kings Hill Irrigation & Power Company, a corporation, is defendant, which said judgment and decree is recorded in Judgment Book One of said court, on page 485, and which is in the words and figures following, to-wit:

(See Exhibit K of this statement for copy of decree, which is made a part of this Order of Sale.)

Now, therefore, you, the said R. M. McCracken, are hereby commanded and required to proceed to notice for sale, and to sell the premises hereinbefore described, to apply the proceeds of such sale to the satisfaction of said judgment and decree with the interest thereon, and costs, together with your fees, and to make and file your return of such sale to the Clerk of the said District Court within sixty days from the date hereof, and to do all things according to the terms and requirements of the said judgment and the provisions of the statute in such cases made and provided.

Witness the Honorable FRANK S. DIETRICH,  
Judge of the District Court of the United States, for  
the District of Idaho, and the seal of said Court, this  
17th day of April, 1912.

A. L. RICHARDSON,

Clerk.

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*In the District (Formerly Circuit) Court of the  
United States, for the District of Idaho,  
Southern Division.*

PACIFIC COAST PIPE COMPANY, a Corporation,  
Plaintiff,

VS.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation,

Defendant.

No. 351.

*To the Honorable, the Judge of the District (former-  
ly Circuit) Court of the United States for the Dis-  
trict of Idaho, Southern Division:*

The undersigned, appointed Special Master in the  
above entitled cause by an order contained in the de-  
cree made therein on December 14, 1911, and filed  
December 30, 1911, and directed by an order of sale  
issued out of the District Court of the United States,  
for the District of Idaho, in said cause, on the 17th  
day of April, 1912, to make sale of the property of  
the Kings Hill Irrigation & Power Company, a cor-  
poration, described in the decree and order of sale

hereinbefore referred to, respectfully reports that, pursuant to law and the terms of said decree, he caused thirty (30) days' notice of such proposed sale to be given by advertisement once a week for four weeks prior to such sale in the Owyhee Nugget, a newspaper printed, regularly issued and having a general circulation in Owyhee County, State of Idaho, as also in the Shoshone Journal, a newspaper printed, regularly issued and having a general circulation in Lincoln County, said state, in both of which counties a portion of said property was and is situated, in which notices, and each of them, there was given the time and place of such proposed sale and a description of the property to be sold.

That, on the day fixed for said sale, to-wit, on the 28th day of May, 1912, I proceeded to Silver City, in Owyhee County, said State of Idaho, and then and there, at the time and place advertised for said sale, offered for sale to the highest bidder the said property described in said decree, and in said notices of sale, in accordance with the terms of said decree, order of sale and notice of sale, of which terms I then and there made due and public proclamation; whereupon, at said time and place, Pacific Coast Pipe Company, plaintiff in said action, bid the sum of Twelve Thousand One Hundred Ninety-two and Sixty Hundredths (\$12,192.60) Dollars, being the full amount named in said judgment and decree, with accrued interest and costs, including Master's fees, disbursements and commissions on said sale, which said bid being the only bid made or offered at said

sale, I thereupon struck off and sold the said property to said Pacific Coast Pipe Company.

That the property so offered for sale and sold was and is described in said decree and in said order and notice of sale, and is described as follows:

That certain ditch, flume and canal and right of way therefor, described in the complaint herein and located in Lincoln, Twin Falls, Owyhee and Elmore Counties, State of Idaho, together with all appurtenances thereunto belonging or in anywise appurtenant and including all main and subordinate laterals, dams, head-gates, rights of way, water rights, etc., which said canal is more particularly described as follows, to-wit:

The intake of said canal is at a point on the right bank of the Malad River in Lincoln County, State of Idaho, near the North and South line between the Northwest Quarter of the Northwest Quarter ( $NW\frac{1}{4}$  of  $NW\frac{1}{4}$ ) and the Northeast Quarter of the Northwest Quarter ( $NE\frac{1}{4}$  of  $NW\frac{1}{4}$ ) of Section thirty-five (35), Township six (6) South, Range thirteen (13) East, Boise base and meridian; said point being approximately South 75 deg. 22 min., East one thousand one hundred ninety-five and five-tenths (1195.5) feet from the Southeast corner of Section twenty-seven (27), said township and range. From the said point of diversion the canal continues along the right bank



of said river for a distance of about five thousand six hundred (5600) feet to Snake River; thence across Snake River on a steel span bridge in an inverted syphon wooden pipe one thousand four hundred (1400) feet to the South side of Snake River; thence running in a West-erly direction along the South side of Snake River for a distance of about twenty miles to a point near the center of Section five (5), Town-ship six (6) South, Range eleven (11) East, Boise Meridian, which is the end of the main canal, from which point the distribution system, consisting of main laterals known as the Poison Bench Branch and King Hill Syphon, King Hill Branch, King Hill Bench Branch and Glenns Ferry Branch, together with subordinate later-als, extends on, over and across lands in Town-ships five (5) and six (6) South, Ranges ten (10) and eleven (11) East, Boise Meridian, not including or covering what is known as the Craster Flat unit or lateral.

All of which is reported to this Honorable Court for its information and such action as it may deem proper in the premises.

R. M. McCRACKEN,  
Special Master.

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## EXHIBIT M.

*In the District (Formerly Circuit) Court of the  
United States, for the District of Idaho,  
Southern Division.*

PACIFIC COAST PIPE COMPANY, a Corporation,  
Plaintiff,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation,

Defendant.

The report of Robert M. McCracken, heretofore appointed Special Master to make the sale heretofore ordered and decreed, having been duly filed and it appearing therefrom that said Special Master duly struck off and sold as one parcel and as an entirety the whole of the property mentioned and described in said decree to the plaintiff in said cause, Pacific Coast Pipe Company;

And it appearing further that notice has been duly given to the attorneys for said defendant of the return and report of sale by said Special Master and that plaintiff would move for a decree to be entered confirming the said sale;

*Now, therefore*, it is, on motion of the attorneys for plaintiff, by the Court ordered, adjudged and decreed that the said sale be, and the same is, hereby confirmed.

FRANK S. DIETRICH,  
United States District Judge.

Dated July 9, 1912.

EXHIBIT N.

*This Indenture*, made this 5th day of September, 1913, between R. M. McCracken, Special Master appointed by the Judge of the District (formerly Circuit) Court of the United States, for the District of Idaho, Southern Division, in that certain action entitled Pacific Coast Pipe Company, a corporation, plaintiff, vs. Kings Hill Irrigation & Power Company, a corporation, defendant, the party of the first part, and the Pacific Coast Pipe Company, a corporation of the State of Washington, with its principal place of business at Seattle, County of King, in said State of Washington, the party of the second part.

WITNESSETH:

*Whereas*, in and by a certain judgment or decree rendered by the District (formerly Circuit) Court of the United States, for the District of Idaho, Southern Division, on the 14th day of December, 1911, and entered therein on the 30th day of December, 1911, in a certain action then pending in said court, wherein the Pacific Coast Pipe Company, a corporation, was plaintiff and the Kings Hill Irrigation & Power Company, a corporation, was defendant, and of which said judgment or decree a certified copy was delivered to said party of the first part, as such Special Master, for execution, it was, among other things, ordered, adjudged and decreed, that, if the said judgment was not paid within ninety days from the entry of said decree, the party of the first part as such Special Master should sell the property hereinafter and in said decree described, to satisfy plain-

tiff's lien in said action decreed, to the highest bidder for cash at public auction at the door of the Court House of Owyhee County, State of Idaho, in the town of Silver City, in said Owyhee County, State of Idaho; that thirty (30) days' notice of such proposed sale, giving the time and place thereof and a description of the property to be sold, should be given by said Special Master by advertisement once a week for four weeks prior to such sale in "The Owyhee Nugget," a newspaper printed, regularly issued and having general circulation in Owyhee County, State of Idaho, and in the "Shoshone Journal," a newspaper printed, regularly issued and having general circulation in Lincoln County, State of Idaho; that the plaintiff might become a purchaser at such sale; and that said Special Master, after the time allowed by law for redemption, execute a deed to the purchaser of said premises on said sale; and

*Whereas*, the said Special Master, did, pursuant to law and the terms of said decree, cause thirty (30) days' notice of such proposed sale to be given by advertisement once a week for four weeks prior to such sale in "The Owyhee Nugget," a newspaper printed, regularly issued and having general circulation in Owyhee County, State of Idaho, as also in the "Shoshone Journal," a newspaper printed, regularly issued and having general circulation in Lincoln County, said state, in both of which counties a portion of said property was and is situated, in which notices, and each of them, there was given the time



and place of such proposed sale and a description of the property to be sold; and

*Whereas*, on the day fixed for said sale, to-wit, on the 26th day of May, 1912, the said Special Master did duly sell at public auction at the door of the Court House of Owyhee County, State of Idaho, in the town of Silver City, in said Owyhee County, State of Idaho, agreeably to the said judgment or decree and the provisions of law, the premises in said judgment or decree mentioned; at which sale the premises in said judgment or decree and hereinafter described, were fairly struck off to the said Pacific Coast Pipe Company, the said party hereto of the second part, for the sum of Twelve Thousand One Hundred Ninety-two and Sixty Hundredths Dollars (\$12,192.60), lawful money of the United States, it being the highest bidder and that being the highest sum bid for the same; and

*Whereas*, the said party of the second part thereupon paid to the said Special Master the said sum of money so bid by it; and

*Whereas*, the said Special Master thereupon reported the said sale to said court and the said court did, on the 10th day of July, 1912, enter an order confirming said sale to the party of the second part herein; and

*Whereas*, more than one year has elapsed since the date of said sale and no redemption has been made of the premises so sold, as aforesaid, by or on

behalf of the said judgment debtor, the said defendant, or by or on behalf of any other person;

*Now, Therefore, this Indenture Witnesseth*, that the said party of the first part, the said R. M. McCracken, Special Master, in order to carry into effect the sale so made by him as aforesaid, in pursuance of said judgment or decree and in conformity to the statute in such case made and provided, and also in consideration of the premises and the sum of Twelve Thousand One Hundred Ninety-two and Sixty Hundredths Dollars (\$12,192.60), lawful money of the United States, so bid and paid to him by said purchaser, the said Pacific Coast Pipe Company, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell and convey unto the said party of the second part and to its successors and assigns forever:

That certain ditch, flume and canal and right of way therefor described in the complaint herein and located in Lincoln, Twin Falls, Owyhee and Elmore Counties, State of Idaho, together with all appurtenances thereunto belonging or in anywise appurtenanting and including all main and subordinate laterals, dams, headgates, rights of way, water rights, etc., which said canal is more particularly described as follows, to-wit:

The intake of said canal is at a point on the right bank of the Malad River in Lincoln County, State of Idaho, near the North and South line between the

Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$  of NW $\frac{1}{4}$ ) and the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$  of NW $\frac{1}{4}$ ) of Section thirty-five (35), Township six (6), South, Range thirteen (13) East, Boise base and Meridian; said point being approximately South 75 degrees 22 minutes East one thousand one hundred ninety-five and five tenths (1,195.5) feet from the southeast corner of Section twenty-seven (27), said township and range. From the said point of diversion the canal continues along the right bank of said river for a distance of about five thousand six hundred (5,600) feet to Snake River; thence across Snake River on a steel span bridge in an inverted syphon wooden pipe one thousand four hundred (1,400) feet to the south side of Snake River; thence running in a westerly direction along the south side of Snake River for a distance of about twenty miles to a point near the center of Section five (5), Township six (6) South, Range eleven (11) East, Boise Meridian, which is the end of the main canal, from which point, the distribution system, consisting of main laterals known as the Poison Basin Branch, King Hill Syphon, King Hill Branch, King Hill Bench Branch, and Glenns Ferry Branch, together with subordinate laterals, extends on, over and across lands in Townships five (5) and six (6) South, Ranges ten (10) and eleven (11) East, Boise Meridian, not including or covering what is known as the Craster Flat unit or lateral.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belong-

ing, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof,

To have and to hold, all and singular, the premises above mentioned and described, and hereby conveyed, or intended so to be, together with the appurtenances, unto the said party of the second part, its successors and assigns forever.

*In Witness Whereof*, the party of the first part as Special Master as aforesaid, has hereunto set his hand and seal the day and year first above written.

(Seal)

R. M. M'CRACKEN,  
Special Master.

Witnesses:

W. C. Bower,  
Ella Woods.

United States of America,  
District of Idaho,  
County of Ada—ss.

On this 5th day of September in the year 1913, before me, A. L. Richardson, Clerk of the Circuit Court for the District of Idaho, personally appeared R. M. McCracken, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

*In Witness Whereof*, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

A. L. RICHARDSON,  
Clerk.



The above and foregoing statement of the evidence on the appeal having been presented to me for settlement and it appearing to me that the same is true, complete and properly prepared; and it further appearing to me that the solicitors for plaintiff and for all other parties to the suit, were duly notified of the lodgment of such statement and have made no objections and have proposed no amendments thereto.

The said statement is, therefore, approved this 30th day of June, 1914.

FRANK S. DIETRICH,

United States District Judge, District of Idaho.

*Indorsed: Filed June 30, 1914. H. L. Richardson Clerk*

*In the United States District Court for the District  
of Idaho, Southern Division.*

CONTINENTAL & COMMERCIAL TRUST &  
SAVINGS BANK,

Plaintiff,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, et al.,

Defendants and Interveners.

No. 428

*Memorandum Decision.*

Nov. 18, 1913.

Mayer, Meyer, Austrian & Platt, and Richards &  
Haga, Attorneys for Plaintiff.

N. M. Ruick, Wood & Driscoll, Benjamin S. Crow,  
F. B. Ebbert, and T. S. Risser, Attorneys for De-  
fendants and Interveners.

## DIETRICH, DISTRICT JUDGE:

1. The controlling question in the controversy between the plaintiff and the defendant, Pacific Coast Pipe Company, is thought to be ruled by the decision filed in this court November 18, 1913, in the case of Utah Implement-Vehicle Company vs. Frank C. Bowman, Trustee, and others; for the information of counsel and for their convenience a copy of that decision, so far as it is pertinent, is appended hereto. The only consideration suggested as possibly differentiating the two records is that here the loss of the Pipe Company's lien through failure to make the plaintiff a party to its foreclosure suit is not pleaded. But it is not incumbent upon the plaintiff to plead this fact as an affirmative defense to the cross complaint. The universal practice, so far as I have observed, is for the plaintiff, in a suit to foreclose a mechanic's lien, to plead all the facts necessary to show that its claim constitutes a valid subsisting lien, including the fact that it has not been lost by lapse of time; and a complaint failing so to do is held to be demurrable. This rule it is thought is supported both upon principle and by the weight of authority. *Davis vs. Bartz*, 69 Wash. 395, 118 Pac. 334. *Fury v. Boekler*, 6 Mo. App. 29; *Badger L. Co. v. Staley* (Mo.), 125 S. W. 779. *Peterson v. Dillon*, 67 Pac. 397. *Savings Bank v. Powhatan, etc.*, 46 S. E. 294. *Stern v. La Compaignie*, 110 Fed. 996. *The Harrisburg*, 119 U. S. 199. *Arnson v. Murphy*, 115 U. S. 579. *Frates v. Sears*, 77 Pac. 905. *Graves v. Seifreid*, 87 Pac. 674. *Boncofska v. Jacobsen*, 104 Pac. 117.

2. From the conclusion stated in the foregoing paragraph it also follows that the Pipe Company now has no lien upon the bridge upon which the Steel & Machinery Company claims a lien; and therefore it has nothing to foreclose. If it now holds the legal title to the bridge, apparently it may contest the Machinery Company's foreclosure in the state court.

3. The complainant's trust deed does not purport to describe the bridge or any property in Elmore County, and the lien thereof must therefore be held to be limited to property situate in Lincoln, Twin Falls, and Owyhee Counties, and not to extend to the bridge or the pipe line carried thereon, or the ditches on the north side of Snake River supplied by such pipe line.

4. The evidence shows that the outstanding bonds secured by the trust deed aggregated \$358,400.00. They bear interest at the rate of six per cent. per annum, and no interest has been paid thereon since May 1, 1911. The complainant is therefore given a decree for \$358,400.00, with simple interest thereon at the rate of six per cent. per annum from May 1, 1911, up to the date of the entry of the decree.

Under Section 1539 of the Idaho revised codes, it is not thought that interest can be allowed upon the overdue interest coupons. *Vermont Loan & Trust Co. v. Hoffman*, 5 Idaho, 376; 49 Pac. 314. *Cleveland v. Western Loan & Savings Co.*, 7 Idaho, 477; 63 Pac. 885.

5. Let the complainant prepare a decree in harmony herewith, the same to guard the rights of the Extension Company, the State, and the settlers, to the extent agreed upon at the hearing. Draft of decree should be submitted to counsel for the several interests represented. It is desired that the decree be drafted and offered for signature without unreasonable delay.

EXCERPT FROM DECISION IN  
UTAH IMPLEMENT-VEHICLE CO., a Corporation,  
tion,

v.

FRANK C. BOWMAN, as Trustee, and others.

The precise question therefore is, whether or not a lien claimant under the machinics' lien law of Idaho loses his priority of lien as against a junior mortgagee, by foreclosing his lien without bringing in and making a party to such foreclosure suit the mortgagee, the period provided by the statute in which proceedings may be commenced for the enforcement of the lien, expiring during the pendency of the suit.

A mechanics' lien is wholly the creature of statute, and therefore the question must be referred to the statutory law of the state. In construing such statutes two principles are to be borne in mind: Upon the one hand, they are to be construed liberally, with a view to effecting their object and doing substantial justice, and upon the other hand, we must take them as we find them, and we are



not at liberty to add to or subtract therefrom. The question of policy is one exclusively for the legislature, and it is our function only to ascertain, if possible, the intent of the statutes, and then administer them in such a manner as to give effect thereto.

Section 5110 of the Idaho Revised codes provides generally that every person performing labor upon, or furnishing materials to be used in the construction of a building, has a lien upon the same for the work done or materials furnished. Section 5114 provides that such liens are preferred to other incumbrances attaching subsequent to the time when the building was commenced or the work done or materials furnished. Section 5115 requires that any person claiming a lien shall, within the period therein prescribed, file his verified claim therefor, containing certain statements of fact, in the office of the county recorder of the county in which the property is situated. Section 5118 is as follows: "No lien provided for in this chapter binds any building, mining claim, improvement or structure for a longer period than six months after the claim has been filed, unless proceedings be commenced in a proper court within that time to enforce such lien; or, if a credit be given, then six months after the expiration of such credit; but no lien shall continue in force under this chapter for a longer period than two years from the time the work is completed, or credit given, unless proceedings to enforce the same shall have been commenced." Section 5124 provides that the general rules of civil procedure pre-

scribed by the codes shall apply in proceedings to foreclose liens. No other provisions are thought to have any material relation to the question under consideration, and it is apparent that, of those referred to, Section 5118, which is set out in full, is of primary importance. Admittedly, if no action at all is commenced within the period therein named, the lien lapses and absolutely ceases to exist as to all the world. The contention of the defendant, however, is that, under this section, "proceedings" are "commenced" when a suit to foreclose the lien is brought by the lienor against the owner of the property upon which the lien is claimed. The reasoning is that, in a suit of foreclosure of a mortgage or of a mechanics' lien, the owner of the title to the property is the only indispensable party, and that while others may be proper parties, their presence is not essential to the validity of the decree which may be entered therein. It is doubtless true that the owner of the property is the only indispensable party to such suit, and in a case where he is the sole defendant the decree is not void; it is effective to the extent of cutting off his rights and estate, and doubtless a deed issued to a purchaser upon a proper sale had under the provisions of such decree, operates to transfer his title to the purchaser. But upon the other hand, it is also undoubtedly the case that incumbrancers who are not made parties to such suit are in no wise affected by the decree, and their liens remain unimpaired. If not entirely aside from the point, therefore, it is certainly not

conclusive of the question under consideration to say that the decree entered in the consolidated case in the state court, foreclosing the liens of the several claimants, is valid. Likewise a decree would be valid if the suit were prosecuted against but one of several part owners of the property; but in such case what would be the status of the lien as touching the interests of the other part owners? So the plaintiff here, conceding that the decree in the former suit is conclusive upon the parties thereto, contends only that it is in no wise bound thereby, and that, the time having long since elapsed for foreclosing the liens against it, they have therefore ceased to exist, so far as its interest is concerned. And it must be conceded that its rights were not, and could not be, affected by a suit to which it was not a party. The record in that case cannot operate even as *prima facie* evidence against it. If it were assumed that the lien claimants are not prejudiced by the lapse of time, they could not now bring forward the decree as the measure or evidence of their rights, but as against the plaintiff they would be compelled to make proof *de novo* in support of their claims, the same as if such decree had never been entered. *Hassall v. Wilcox*, 150 U. S. 493. In that view it follows that no proceedings were ever commenced to enforce the liens against the interest of this plaintiff.

The real question, therefore is, whether or not the commencement of a proceeding against one party in interest operates to keep alive the lien as to all

parties in interest. It will be observed that Section 5118 does not purport in terms to prescribe who shall be made parties to the suit, either plaintiff or defendant, and in giving to it a practical construction it is necessary to interpolate a designation or description of the parties. Defendant would make the clause, "unless proceedings be commenced in a proper court, etc.," read, "unless proceedings be commenced in a proper court *against the owner of the property*, etc.," whereas the plaintiff would have it read, "unless proceedings be commenced in a proper court *against the person or persons against whose interests the lien is asserted*, etc." After the most earnest consideration, I cannot escape the conclusion that this latter view is in substantial accord with the true intent of the legislature. No lien, it is provided, shall bind the property for a period of more than six months, "unless proceedings be commenced in a proper court within that time to enforce such lien." But proceedings to enforce the lien against what and against whom? The natural answer is, the lien against the right or interest of anyone against whose right or interest the lien is claimed or asserted. The proceeding is one to foreclose a right, an estate, an interest, and it should be instituted against all those whose rights, estates or interests are claimed to be subordinate, and which may therefore be subject to foreclosure. Surely it is not sufficient merely to bring in such parties as will enable the plaintiff to procure some sort of valid decree. As already suggested, a suit by the claim-



ant against one of several co-owners of the property might result in a valid decree; it would establish the lien as against the estate of such defendant, and the ensuing sale would effectually foreclose his right. But by no one, as I understand, is it contended that such a proceeding would operate to keep alive the lien upon the interests of other part owners. If, then, such an interest remains unaffected thereby, why should an exception be made in the case of a mortgagee or the holder of an estate or interest of a different character? The proceeding is to be commenced to enforce the lien, not against a single specified estate or interest, but against any estate, interest, or right which the lienor claims to be adverse and subordinate to his lien, and therefore subject to foreclosure, and the privilege of commencing a proceeding for such a purpose, that is, for any foreclosure or the foreclosure of any right or interest, is, as to such right, interest, or estate, limited to the specified period.

If now we turn from an analysis of the text to a consideration of the reasons for enacting the provision and the objects to be affected thereby, we are impelled to the same conclusion. We must assume that the legislature acted neither arbitrarily nor capriciously, but upon the other hand the reasons must have seemed to it cogent for requiring suit to be commenced in so short a time. Manifestly, the principal, if not the only, purpose of such a limitation could have been to require that the amount and dignity of the lien be judicially ascertained and

established while the transaction out of which it arises is sufficiently recent to render the facts reasonably accessible to all parties concerned. Any dispute touching the amount of the claim, the date of its origin, or the time to which the lien relates, is thus to be conclusively settled while the facts are still fresh and the witnesses are available. Now it cannot be doubted that it is often quite as important, if not more important, to an incumbrancer who is a stranger to the transactions upon which the claim of lien is based, to have the benefit of this protection as to the owner himself, who is in a better position to know the facts and to preserve the evidence thereof. Disputes not infrequently arise between mortgagees and lien claimants touching the priority of their respective liens, and inasmuch as the facts establishing the date as of which the mechanics' lien attaches, often rest entirely in parol, and can therefore easily be colored or perverted, it is important that the issue be promptly determined. If we give place to the view urged by the defendant it could very well happen that after the lapse of years a mortgagor would for the first time learn or have reason to suspect that a title originating in the foreclosure of a mechanics' lien was claimed to be superior to the lien of his mortgage. Not having been made party to the suit, his natural presumption would be that the priority of his mortgage is conceded, and there would be nothing in the transfer of title or change of possession to put him upon his guard.

The argument that the limitation does not apply to a mortgage, because the validity and amount of a mechanics' lien may be established in a suit between the claimant and the owner of the property alone, and that the only issue in which the mortgagee is interested, namely, the date or relative dignity of the lien, may be tried out in a subsequent suit to redeem, insofar as it has any force at all, rests upon an erroneous assumption, which is, that the mortgagee has no right to question the amount or validity of the claim of lien. These are issues which the incumbrancer equally with the owner may raise, and for that purpose the mortgagee is entitled to his day in court. If, for instance, a lien were asserted for the value of material which was never furnished for use in a structure covered by the mortgage, it must be clear that the mortgagee may, by showing the fact, defeat the lien or reduce the amount thereof. As was pertinently said in *Davis v. Bartz*, 118 Pac. 334: "A mortgagee has something more than a mere right to redeem as against an antecedent lien. He has a right to contest its validity or assail its priority, if the evidence warrants either defense. He is entitled to his day in court upon these matters within the period fixed by the statute." See also *Hassal v. Wilcox*, 130 U. S. 493. *Davis v. Alvord*, 93 U. S. 545. *Brown v. Cornwell* (Va.), 60 S. E. 623. *Eastmore v. Brinkler*, 113 Ga. 637, 39 S. E. 105. *Adams v. Central City Granite Co.*, 154 Mich. 448, 117 N. W. 932. *Federal Trust Co. v. Guigues*, 76 N. J. Eq. 495, 74 Atl. 652.

Without prolonging the discussion, it is to be added only that upon the principal question the decided cases are not entirely in unison. Of those cited for the defendant, *De La Vergne Refrigerating Co. v. Montgomery Brewing Co.*, 57 Fed. 111, and *Monk v. Exposition, etc. Co.*, (Va.), 68 S. E. 280, it may be conceded, strongly tend to support its position. In *Cornell v. Conine-Eaton Lumber Co.*, (Colo.), 47 Pac. 912, it is made clear that the conclusion reached was the result largely, if not entirely, of the emphasis placed upon a provision of the statute not found in the Idaho law. In the others, namely, *Whitney v Higgins*, 10 Cal. 547; *Gamble v. Voll*, 15 Cal. 507, and *Gaines v. Childers* (Ore.), 63 Pac. 487, while certain language is used favorable to the defense, the precise question was not involved, and they are, to say the least, not directly in point. Furthermore, it is to be added, the construction which the defendant places upon the two California cases, seems to be out of harmony with the more recent decision in *Frates v. Sears* (144 Cal. 246, 77 Pac. 905), where the court cites with apparent approval, *Falconer v. Cochran* (68 Minn. 405, 71 N. W. 386), which unquestionably supports the plaintiff's contention here.

Upon the other hand, it is thought that the conclusion we have reached has the unequivocal sanction of the following cases: *Davis v. Bartz* (Wash.), 118 Pac. 334; *Deming-Colborn, etc., v. Union Nat'l, etc.*, (Ind.) 51 N. E. 936; *Union Natl, etc., v. Helberg*, (Ind.) 51 N. E. 916; *Stoermer v. People's Sav-*



*ings Bank* (Ind.), 52 N. E. 606; *Green v. Sanford* (Neb.), 51 N. W. 967; *Ballard v. Thompson* (Neb.) 58 N. W. 1133; *Smith v. Hurd* (Minn.) 52 N. W. 922; *Hokanson v. Gunderson* (Minn.), 56 N. W. 172; *Falconer v. Cochran* (Minn.), 71 N. W. 386; *Dunphy v. Riddle*, 86 Ill. 22; *Crowl v. Nagle*, 86 Ill. 437; *McGraw v. Bayard*, 96 Ill. 146; *Jacks v. Sullivan* (Mo.), 30 S. W. 890; *Badger L. Co. v. Staley* (Mo.), 125 S. W. 779. I refrain from collocating other cases, cited as indirectly tending to the same result.

(Indorsed): Filed Nov. 18, 1913. A. L. Richardson, Clerk.

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*In the District Court of the United States for the  
District of Idaho, Southern Division.*

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee,

Complainant,

vs.

KINGS HILL IRRIGATION & POWER COMPANY, a corporation; GLENN'S FERRY CANAL COMPANY, LIMITED, a corporation; PACIFIC COAST PIPE COMPANY, a corporation; KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED, a corporation; MINNEAPOLIS STEEL AND MACHINERY COMPANY, a corporation, and C. R. SHAW,

Defendants,

And

THE STATE OF IDAHO, on the relation of John M. Haines, Governor; Joseph Peterson, Attorney General; Wilfred L. Gifford, Secretary of State; Grace M. Shepherd, Superintendent of Public Instruction, and Fred Huston, State Auditor, constituting the State Board of Land Commissioners of the State of Idaho; F. E. WILSON et al., and CRASTER FARM & ORCHARD COMPANY,  
Interveners.

### DECREE.

This cause came on to be heard this term and was argued by counsel, and, thereupon, upon consideration thereof, it was ORDERED, ADJUDGED and DECREED as follows, to-wit:

#### I.

That the mortgage or deed of trust, dated the second day of November, 1908, made by the defendant, KINGS HILL IRRIGATION & POWER COMPANY, to the complainant, and the supplemental mortgage, dated the first day of March, 1909, and made by the defendant, KINGS HILL IRRIGATION & POWER COMPANY, to the complainant herein, and which said mortgages or deeds of trust are sought to be foreclosed in this action, are first and paramount liens, prior and superior to the lien or interest of any of the other parties hereto, to secure the payment of the sums hereinafter found due, upon the following described property, to-wit:

#### DAM AND HEADWORKS.

All the right, title and undivided interest which said Kings Hill Irrigation & Power Company owned

or held, on the second day of November, 1908, or which it has since acquired, in that certain dam located in and across the Malad River, in the county of Gooding (formerly Lincoln County), State of Idaho, at a point on said river near the north and south line between the northwest quarter of the northwest quarter and the northeast quarter of the northwest quarter of Section 35, Township 6, South of Range 13 East, Boise base and meridian, the said point being approximately south 75 degrees 22 minutes each 1,195.5 feet from the southeast corner of Section 27, said township and range.

#### WORKS ON MALAD RIVER.

All the right, title and undivided interest which said Kings Hill Irrigation & Power Company owned or held on the second day of November, 1908, or which it has since acquired, in and to that certain canal, ditch, flume, headgate and headworks, through and by means of which water is diverted from said Malad River at the dam above described, and running thence along the right bank of said river for a distance of about 5,600 feet to the syphon pipe, hereinafter described, across Snake River.

#### SYPHON PIPE AND BRIDGE.

The inverted syphon pipe about 1,400 feet in length, by means of which the said waters of the Malad River are carried, conveyed and conducted across Snake River in the southwest quarter of the southwest quarter of said Section 27, Township 6, South of Range 13 East, Boise Meridian, and that

certain steel span bridge across said Snake River carrying and supporting said syphon pipe.

#### ENTIRE SYSTEM SOUTH SIDE SNAKE RIVER.

All canals, ditches, laterals, headgates, flumes and the entire irrigation system of the Kings Hill Irrigation & Power Company, owned or held by said Company on November 2, 1908, or which it subsequently acquired or constructed, commencing at the end of the syphon pipe above described, on the south side of Snake River, in the southwest quarter of the southwest quarter of Section 27, and extending thence in a general westerly direction on the south side of Snake River, through sections 28, 21, 20, 17, 18 and 7, Township 6, south of Range 13 east, and through sections 12, 11, 14, 15, 16, 17, 8, 7 and 18 in Township 6, South of Range 12 east, and Sections 13, 14, 15, 22, 21, 16, 17, 8, 9 and 4, and to a point near the center of Section 5 in Township 6, south of Range 11 east, the same being the terminus of the main canal; with all laterals, ditches, flumes and pipe lines and syphon pipes extending and leading from the said canal above described, and from the terminus thereof, and used for the irrigation of lands or domestic purposes in said Gooding (formerly Lincoln), Twin Falls, and Owyhee Counties, Idaho; the lower or northwesterly end of said irrigation system extending to a point near the northeast corner of Section 33, Township 5, South of Range 10 East, B. M. Provided, that no property situate in Elmore County is covered or affected by this decree.



## RIGHTS OF WAY.

All the right-of-way, easements, privileges and franchises for the dam, canals, ditches, laterals, pipe lines, syphon pipes and irrigation system owned by Kings Hill Irrigation & Power Company on the second day of November, 1908, or which it has since acquired.

## WATER LOCATION AND PERMIT.

All the right, title and undivided interest which said Kings Hill Irrigation & Power Company owned or held on the second day of November, 1908, or which it may since have acquired in and to the waters of said Malad River under and by virtue of that certain water location of 500 cubic feet per second, made on the 26th day of March, 1902, by Herman Rapp and Ernest Pearson; and under that certain water location made by the Glenns Ferry Land & Irrigation Company, Limited, on the 7th day of August, 1902, for 500 cubic feet per second, and under that certain permit known as Permit No. 438, and issued by the State Engineer of the State of Idaho, on the 23rd day of January, 1904, for 1,100 cubic feet per second.

## CONTRACTS WITH STATE OF IDAHO.

All the rights, grants, interest, privileges, easements and franchises acquired by the Kings Hill Irrigation & Power Company under the contract dated May 1st, 1908, between the State of Idaho, through its State Board of Land Commissioners, and the Company, as well as under any similar or

other contract theretofore entered into between the same parties or between the State of Idaho and the predecessor in interest of the said Kings Hill Irrigation & Power Company, including all the right, title and interest of whatsoever kind which the Kings Hill Irrigation & Power Company may have in and to its said irrigation system, and the right to sell or contract for the sale of water rights or shares in said irrigation works and system and shares of the capital stock of the Glenns Ferry Canal Company, Limited, now in the hands of the complainant or in the possession of the receiver heretofore appointed in this cause.

#### WATER RIGHT CONTRACTS AND MORTGAGES.

All the right, title and interest originally held in said Kings Hill Irrigation & Power Company in and to the following described contracts heretofore made by said Kings Hill Irrigation & Power Company for the purchase of water rights and shares in said irrigation system, described in the contract between the State of Idaho by the State Board of Land Commissioners and the defendant, Kings Hill Irrigation & Power Company, as amended under date of May 1, 1908, constituting, to the extent of the unpaid portion of the purchase price of said water rights, first liens on the lands irrigated thereunder, and heretofore deposited with the complainant and assigned in writing by the defendant, Kings Hill Irrigation & Power Company, to the complainant, and the assignment thereof recorded in the office of the

County Recorder of the County where the land upon which the contract or contracts constitutes a lien may be situated, being the contracts below enumerated, there being specified in this decree and dates, numbers, names of the several contracting parties, description of lands covered, unpaid balances of principal, dates of filing for record, and books and pages of record (where reference in the following enumeration of books is by numerals, the contracts are recorded and land situated in Owyhee County, Idaho; where said reference to books is by letter, the contracts are recorded and the lands situated in Twin Falls County, Idaho), to-wit:

See Pages 19 to 23 inclusive, in the Bill of Complaint.

## STOCK AND AGREEMENTS GLENN'S FERRY CANAL CO., LTD.

All the right, title and interest of the Kings Hill Irrigation & Power Company, owned or held by the said Company on the second day of November, 1908, in and to the stock of the said Glenn's Ferry Canal Company, Limited, and all rights accruing to the Kings Hill Irrigation & Power Company under the agreement and agreements between the Kings Hill Irrigation & Power Company and the Glenn's Ferry Canal Company, Limited.

## II.

That there are outstanding four hundred sixty-three (463) bonds of the aggregate principal amount of Three Hundred Fifty-eight Thousand Four Hun-

dred Dollars (\$358,400), which said bonds are now due and payable, together with interest thereon at six per cent. per annum from the first day of May, 1911, and each of said bonds is secured by the said deed of trust or indenture of mortgage, and the amendment thereto, and each and every of said bonds is entitled, without preference or priority of one over the other, to the benefit afforded as security by said deed of trust and said amendment thereof.

### III.

That there is at the date of this decree due, owing and unpaid on said outstanding bonds of the defendant, KINGS HILL IRRIGATION & POWER COMPANY, and secured by said mortgage or deed of trust, and the supplement thereto, for principal and interest, the following amounts, no part of which has been paid, to-wit:

Principal, Three Hundred Fifty-eight Thousand Four Hundred Dollars (\$358,400).

Interest, Fifty-eight Thousand, Two Hundred Forty Dollars (\$58,240).

Amount due for principal and interest at the date of this decree, Four Hundred Sixteen Thousand, Six Hundred Forty Dollars (\$416,640).

### IV.

That the complainant is entitled to reasonable compensation for services rendered by it pursuant to the provisions of said trust deed and amendment thereof, and to the payment or reimbursement, as the case may require, of all expenses and charges



whatsoever, made, incurred, or suffered by it, in and about the execution of the trust, including solicitors,' counsel fees, and all other obligations incurred by it in respect to its attorneys, agents or employees; and it is ORDERED, ADJUDGED and DECREED that the reasonable compensation of the complainant in and about the premises is the sum of Seven Hundred Fifty Dollars (\$750), and that the complainant has made disbursements in and about the premises in the sum of Two Hundred Thirty and 42-100 Dollars (\$230.42), and has incurred obligations, for counsel and attorneys' fees, in the sum of Forty-two Hundred Fifty Dollars (\$4250), all of which sums are secured by said trust deeds and by the moneys and contracts deposited with complainant; and it is ORDERED that complainant may apply toward the payment of said compensations, disbursements, and obligations incurred for solicitors' and counsel fees, the sum of Two Thousand Seven Hundred Seventy-six and 87-100 Dollars (\$2,776.87), now in the hands of complainant as the proceeds of collections on said contracts, or some of them.

## V.

That the property covered by the trust deed and amendment thereto, including the contracts in the hands of the complainant, should be sold as an entirety and without redemption by the said Master Commissioner hereinafter named, unless the amount found due herein shall be paid prior to the date hereinafter fixed.

## VI.

That the right and interest of the Pacific Coast Pipe Company, sought to be asserted herein by cross-bill, is junior and inferior to the rights and interest of the complainant to and in the property covered by and described in said trust deed and the amendment thereto, and the complainant is entitled to a foreclosure of its lien created by said trust deed for the payment to it of all such moneys and sums as are secured thereby, and is entitled to receive payment in full for all such sums before any sum from the proceeds of the sale of said property shall go to the said Pacific Coast Pipe Company.

## VII.

That neither the complainant, as trustee under and by virtue of said mortgage and amendment thereto, nor the defendant, Pacific Coast Pipe Company, has any lien upon the bridge across the Snake River, described in the answer of the Minneapolis Steel & Machinery Company, and being more particularly described as follows, to-wit: That certain three hundred fifty-three (353) foot, steel highway bridge over and across the Snake River between the counties of Elmore and Owyhee, in the State of Idaho, the northerly end of said bridge abutting the bank of the said Snake River in said Elmore County at a point in Lot 1, Section 12, Township 5 South, Range 10 East, Boise Meridian, at or near the village of King Hill; and that said bridge is not included in the property described in the bill of complaint herein.

## VIII.

That unless the defendant, KINGS HILL IRRIGATION & POWER COMPANY, or some one in its behalf, shall pay to the complainant on or before the first day of March, 1914, the several amounts found due hereunder, to-wit: the sum of \$750.00 for compensation to the complainant; the sum of \$230.42 as and for the disbursements of the complainant; the sum of \$4,250.00 as and for the compensation of the complainant's solicitors and attorneys, less the sum of \$2,776.87, herein found to be in the hands of complainant and herein directed to be applied thereon; and the sum of \$416,640.00 as and for the amount due, with interest thereon to the date of the entry of this decree, upon the bonds outstanding under said trust deed, together with interest on said several sums at 6 per cent. from the date of the entry of this decree to the date of such payment; and shall pay to the holders thereof the amount due for principal and interest upon Receiver's certificates, heretofore authorized by this Court, together with interest thereon to the date of such payment, and the costs and compensation of said Receiver, it is ORDERED that R. M. McCracken, who is hereby named as Special Master Commissioner, sell all of said mortgaged premises particularly described in Paragraph 1 hereof, together with the contracts on deposit with the complainant, which contracts the complainant shall deliver to the said Special Master Commissioner at or before the date fixed for said sale; the said Special Master Commissioner shall

give due notice of said sale by publication once each week for four successive weeks, preceding the date of said sale, in a newspaper published and of general circulation in Gooding County, Idaho, and in a newspaper published and of general circulation in Elmore County, Idaho, but may proceed with such publication without waiting for the time limited within which the KINGS HILL IRRIGATION & POWER COMPANY, or some one on its behalf, may make the payments herein decreed to be due and payable; said notice of sale shall contain a description of the property to be sold, and the terms of sale. The sale shall be made at the front door of the Court House in the County of Owyhee, in the State of Idaho, being the county in which the greater part of said real estate and irrigation works are situated; that all of said property, real, personal and mixed, covered by the lien of said mortgage or deed of trust and amendment thereto, including said deposited contracts, be sold in bulk, and as an entirety, and all thereof without the right of redemption, the same to all intents and purposes as though all of said property were personal property.

The Special Master Commissioner is hereby empowered to adjourn said sale at any stage of the proceedings, to any room in said court house available for that purpose, and convenient for the use of the Special Master Commissioner, and said Special Master Commissioner may in his discretion adjourn the sale for any reasonable time, for any reason that may seem to him good and sufficient, by announc-



ing such adjournment, and the time and place to which such sale shall be adjourned, at the time appointed for such sale, and may in like manner, from time to time, adjourn such sale without further advertisements.

The property herein directed to be sold includes all reservoirs, dams, ditches, canals, flumes, gates, and other means for the use of water and all water rights and appropriations of water herein described or referred to, embracing and including the entire irrigation system of the defendant, KINGS HILL IRRIGATION & POWER COMPANY, and all and every part and parcel and unit thereof, and all and every right, franchise, privilege, easement, lien, immunity and incident appertaining or belonging thereto, including all rights of way and including all contracts with the State of Idaho in which said Kings Hill Irrigation & Power Company are interested, and all amendments and supplements and additions thereto, and all benefits, gains, franchises, rights, privileges and easements belonging or appertaining thereto, or arising, or to arise, therefrom, all settlers' contracts hereinbefore described, of every name and nature, now in the possession of, or under the control of, the complainant, together with all rights, franchises, privileges, gains, immunities and incidents arising therefrom, including all deferred payments due or to become due thereon or thereunder, and all manner of security for such payments, and especially all shares of stock of the GLENN'S FERRY CANAL COMPANY, LIMITED, now

owned by KINGS HILL IRRIGATION & POWER COMPANY, and now in the possession of, or under the control of the complainant; excepting, however, all of such property situate in Elmore County.

Upon the sale of the property herein provided to be sold, any party to this suit and any holder or holders of bonds secured by said trust deed, or any committee of bondholders, may become a purchaser or purchasers at said sale.

No bid shall be provisionally accepted at such sale by the Special Master Commissioner from any bidder who shall not have deposited with the Special Master Commissioner, at or prior to the time of the sale, the sum of Thirty Thousand Dollars (\$30,000) in cash or approved certified check.

The court fixes no upset price for said sale, but the court reserves jurisdiction to confirm or not confirm any sale provisionally accepted by the Special Master Commissioner on the coming in of his report of sale.

Any deposit made by an unsuccessful bidder shall be by the Special Master Commissioner returned to him; and any deposit made by the successful bidder shall be applied on the purchase price, and a deposit made by the successful bidder may be forfeited in the event such successful bidder shall fail to comply with the terms and conditions of the sale, and in such event the court may resell the premises, property rights, interests, assets and franchises hereby directed to be sold; but in case the sale

shall not be confirmed by the Court, any deposits or payments made by the purchaser or purchasers, or his or their successors or assigns, shall be returned to the bidder.

The balance of the purchase money, or that part of the purchase money not herein required to be paid in cash, may be paid by the purchaser or purchasers either in cash, or in bonds and the respective coupons belonging thereto, secured by said mortgages or deeds of trust made by Kings Hill Irrigation & Power Company to the complainant, and bearing date, respectively, November 2nd, 1908, and March 1, 1909, and hereinbefore adjudged to be secured thereby; and such bonds and coupons shall be received at such value as would be equivalent to the distributable amount which the holder thereof would be entitled to receive therefor from and out of the purchase money in case the entire amount of the bid were paid in cash.

It is further ordered, adjudged and decreed, that the funds arising from such sale shall be applied as follows:

(a) To the payment of the expenses of the sale, including the compensation to the Special Master Commissioner;

(b) All outstanding obligations incurred by the Receiver, the amount of which is hereafter to be determined;

(c) Costs of suit and the charges, compensation, allowances, and disbursements of the complainant,

remaining unpaid after the application thereto of the sum of \$2776.87 herein directed to be applied thereon;

(d) To the amount found due upon the outstanding bonds secured by the said trust deed and amendment thereto, as found in this decree, together with interest thereon at six (6) per cent. from the date of the entry of this decree to the date of said sale;

(e) Any surplus remaining in the hands of the Special Master Commissioner shall be by him retained to await the further order of this court.

It is further ordered, adjudged and decreed that the Special Master Commissioner execute and deliver the deed or deeds of conveyance of the property sold to the purchaser or purchasers thereof, but not until after confirmation of the sale. As soon as any sale shall have been made by the said Special Master Commissioner in pursuance to this decree, he shall report the same to this Court for confirmation, and shall from time to time hereafter make such further supplemental reports as shall be necessary to keep the Court advised of his proceedings. And B. P. Shawhan, the Receiver of said Kings Hill Irrigation & Power Company and said Continental and Commercial Trust and Savings Bank, as Trustee, shall deliver to the said purchaser or purchasers, his or their successors or assigns, all and singular, the premises, property, rights, interests, assets and franchises of said Kings Hill Irrigation & Power Company hereby directed to be sold, now or then in their possession.



*It is Further Ordered* that said purchaser or purchasers of the said property, and their successors and assigns, after the confirmation of said sale and the delivery of said conveyance or conveyances, shall hold and possess said property and every part thereof, and all the rights, privileges and franchises appurtenant thereto, as fully and completely as the said Kings Hill Irrigation & Power Company held and enjoyed the same and was entitled to hold and enjoy the same at the date of the said deed of trust and amendment thereto, which this action was brought to foreclose, and at any time since, and all the assets, money and property of every description in the custody of said Receiver and in the control of this Court, including all property and assets acquired by said Receiver, both before and after the entry of this decree, and shall possess the right to enforce any contract made by the said Receiver or by said Kings Hill Irrigation & Power Company in his or their own name, and shall be entitled to hold and have all and singular the property so conveyed, free and discharged from all rights, claims and liens of the defendant Kings Hill Irrigation & Power Company and the defendant Pacific Coast Pipe Company, and any of the other defendants herein, save and except as herein otherwise expressly provided.

## IX.

The court reserves jurisdiction to render any deficiency decree for any amount due upon said mortgage bonds and coupons after the application thereto of the proceeds of the sale of the mortgaged property,

as herein decreed, and the court reserves, for further consideration, all matters not herein expressly provided for, or adjudicated.

### X.

No matter pertaining to the rights of the settlers to and in said premises, or any part thereof, by virtue of their contracts heretofore entered into with the Kings Hill Irrigation & Power Company, and no matters pertaining to the rights of the defendants, Kings Hill Extension Irrigation Company, Glenns Ferry Canal Company, Limited, Craster Farm & Orchard Company, and the State of Idaho, are adjudicated by this decree, but all such matters are left for adjudication between said parties and the purchaser or purchasers hereunder, as they may hereafter arise.

### XI.

Any party to this action, or any parties interested herein, may at any time apply to this court for further relief or such modification of the decree in respect to the terms and conditions of the sale or the distribution of the proceeds thereof, or in respect to any other matters not herein named, as may be meet and just and equitable, and jurisdiction of this cause is retained by the court for all such purposes and for the purpose of enforcing the provisions of this decree.

Dated the 15th day of January, A. D. 1914.

FRANK S. DIETRICH,  
Judge.

(Endorsed): Filed January 15, 1914. A. L. Richardson, Clerk.

*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee,

Complainant,

VS.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation, GLENNS FERRY  
CANAL COMPANY, LIMITED, a Corporation,  
PACIFIC COAST PIPE COMPANY, a Corpora-  
tion, KINGS HILL EXTENSION IRRIGATION  
COMPANY, LIMITED, a Corporation, MINNE-  
APOLIS STEEL AND MACHINERY COM-  
PANY, a Corporation, and C. R. SHAW,

Defendants,

AND

THE STATE OF IDAHO, on the relation of John  
M. Haines, Governor, Joseph Peterson, Attorney  
General, Wilfred L. Gifford, Secretary of State,  
Grace M. Shepherd, Superintendent of Public In-  
struction, and Fred Huston, State Auditor, consti-  
tuting the State Board of Land Commissioners of  
the State of Idaho, F. E. WILSON ET AL., and  
CRASTER FARM & ORCHARD COMPANY,

Interveners.

*Summons to Join in Appeal.*

TO KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation, SLICK BROTHERS CON-  
STRUCTION COMPANY, LIMITED, a Corpora-  
tion, CRASTER FARM & ORCHARD COM-

PANY, a Corporation, CRAWFORD MOORE, THE AETNA ACCIDENT & LIABILITY COMPANY, a Corporation, F. E. WILSON, THOMAS TRATHEN, JULIUS SIGMUND, O. E. GRANIER, M. W. STOFFORD, W. J. HERSEY, C. L. HENRY, HENRY KRAUTH, JAS. T. WADDELL, FRED MARHAFFER, H. F. KOCH, JOHN LADD, J. H. RUSSELL, J. C. A. PEICHELL, GEO. LEERIGHT, A. A. ATHA, JOS. N. BERNT and JOE KENNAUGH:

You are hereby notified to join with the undersigned, on or before the 15th day of June, 1914, to prosecute an appeal in the above entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above entitled cause rendered against us jointly on the 15th day of January, 1914, or you will be deemed to have acquiesced in the said judgment and the undersigned will prosecute said appeal without joining you as a party.

PACIFIC COAST PIPE COMPANY, a Corporation.

By N. M. Ruick, Attorney.

Service of the above and foregoing summons to join in appeal and receipt of a copy thereof admitted this 1st day of June, 1914.

KINGS HILL IRRIGATION & POWER COMPANY,

By McKeen F. Morrow, Secretary.

.....,  
Attorneys.



GLENNS FERRY CANAL COMPANY, LIMITED.

By McKeen F. Morrow, Secretary,

.....,  
Attorneys.

KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED.

By McKeen F. Morrow, Secretary.

.....,  
Attorneys.

STATE OF IDAHO

By John M. Haines, Governor.

.....,  
Attorney.

CRASTER FARM & ORCHARD CO.,

By T. S. Risser,

Attorney.

J. W. Slick, Sec. and Treas.

MINNEAPOLIS STEEL AND MACHINERY COMPANY,

By Fremont Wood,

Dean Driscoll,

Attorneys.

F. E. WILSON, THOMAS TRATHEN, JULIUS SIGMUND, O. E. GRANIER, M. W. STOFFORD, W. J. HERSEY, C. L. HENRY, HENRY KRAUTH, JAS. T. WADDELL, FRED MARHAFFER, H. F. KOCH, JOHN LADD, J. H. RUSSELL, J. C. A. PEICHELL, GEO. LEERIGHT, A. A. ATHA, JOS. N. BERNT and JOE KENNAUGH,

By B. S. Crow,

Their Attorney.

C. R. SHAW,

By Edwin Snow,

Attorney for C. R. Shaw.

*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee,

Complainant,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation, GLENN'S FERRY  
CANAL COMPANY, LIMITED, a Corporation,  
PACIFIC COAST PIPE COMPANY, a Corpora-  
tion, KINGS HILL EXTENSION IRRIGATION  
COMPANY, LIMITED, a Corporation, MINNE-  
APOLIS STEEL AND MACHINERY COM-  
PANY, a Corporation, and C. R. SHAW,

Defendants,

AND

THE STATE OF IDAHO, on the relation of John  
M. Haines, Governor, Joseph Peterson, Attorney  
General, Wilfred L. Gifford, Secretary of State,  
Grace M. Shepherd, Superintendent of Public In-  
struction, and Fred Huston, State Auditor, con-  
stituting the State Board of Land Commissioners  
of the State of Idaho, F. E. WILSON ET AL., and  
CRASTER FARM & ORCHARD COMPANY,

Interveners.

*Summons to Join in Appeal.*

TO KINGS HILL IRRIGATION & POWER COM-  
PANY, KINGS HILL EXTENSION IRRIGA-  
TION COMPANY, LIMITED a Corporation,

GLENNS FERRY CANAL COMPANY, LIMITED, a Corporation, and to E. B. Ebbert, their Attorney:

You are hereby notified to join with the undersigned, on or before the 25th day of June, 1914, to prosecute an appeal in the above entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above entitled cause rendered on the 15th day of January, 1914, or you will be deemed to have acquiesced in the said judgment and the undersigned will prosecute said appeal without joining you as a party.

PACIFIC COAST PIPE COMPANY, a Corporation,  
By N. M. RUICK,

Attorney.

Service of the above and foregoing Summons to Join in Appeal is hereby admitted this 17th day of June, 1914.

KINGS HILL IRRIGATION & POWER COMPANY,

By F. B. Ebbert.

GLENNS FERRY CANAL COMPANY, LIMITED,

By F. B. Ebbert.

KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED,

By F. B. Ebbert.

I have served this writ within my district in the following manner, to-wit: Upon the within named F. B. Ebbert (named in writ E. B. Ebbert), Attorney for Kings Hill Irrigation & Power Company,

Glenns Ferry Canal Company, Limited, and Kings Hill Extension Irrigation Company, Limited, by delivering a true copy of same to him, this 17th day of June, A. D. 1914, at Chicago, Illinois.

JOHN J. BRADLEY,

Marshal's fees.

U. S. Marshal.

1 service. . . . \$2.00

By M. I. Giblin, Deputy.

1 mile. . . . . .06

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\$2.06

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*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee,

Complainant,

vs.

KINGS HILL IRRIGATION & POWER COMPANY, a Corporation, GLENN'S FERRY CANAL COMPANY, LIMITED, a Corporation, PACIFIC COAST PIPE COMPANY, a Corporation, KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED, a Corporation, MINNEAPOLIS STEEL AND MACHINERY COMPANY, a Corporation, and C. R. SHAW,

Defendants,

AND

THE STATE OF IDAHO, on the relation of John M. Haines, Governor, Joseph Peterson, Attorney General, Wilfred L. Gifford, Secretary of State,



Grace M. Shepherd, Superintendent of Public Instruction, and Fred Huston, State Auditor, constituting the State Board of Land Commissioners of the State of Idaho, F. E. WILSON ET AL., and CRASTER FARM & ORCHARD COMPANY,  
Intervenors.

*Notice of Lodgment of Statement. No. 428.*

TO THE ABOVE NAMED COMPLAINANT AND TO RICHARDS & HAGA AND MAYER, MEYER, AUSTRIAN & PLATT, ITS ATTORNEYS, AND TO THE DEFENDANT, KINGS HILL IRRIGATION & POWER COMPANY, GLENNS FERRY CANAL COMPANY, LIMITED, KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED, MINNEAPOLIS STEEL & MACHINERY COMPANY AND C. R. SHAW, AND TO DEFENDANT AND INTERVENORS, THE STATE OF IDAHO, CRASTER FARM & ORCHARD COMPANY AND F. E. WILSON, THOMAS TRATHEN, JULIUS SIGMUND, O. E. GRANIER, M. W. STOFFORD, W. J. HERSEY, C. L. HENRY, HENRY KRAUTH, JAS. T. WADDELL, FRED MARHAFFER, H. F. KOCH, JOHN LADD, J. H. RUSSELL, J. C. A. PEICHELL, GEO. LEERIGHT, A. A. ATHA, JOS. N. BERNT, AND JOE KENNAUGH, AND TO F. B. EBBERT, ATTORNEY FOR KINGS HILL IRRIGATION & POWER COMPANY, GLENNS FERRY CANAL COMPANY, LIMITED, KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED; B. S. CROW, T.

S. RISSER, WOOD & DRISCOLL, EDWIN  
SNOW, ATTORNEYS:

You will please take notice that the defendant and cross-complainant, Pacific Coast Pipe Company, by its attorney, has this day lodged in the office of the Clerk of said Court for the examination of the plaintiff and of the defendants and interveners and its and their several solicitors, a statement of the evidence to be included in the record on appeal in said cause to the United States Circuit Court of Appeals for the Ninth Circuit in accordance with paragraph (b) of Rule 75, Rules of Practice for the Courts of Equity of the United States, in force February 1, 1913.

You are further notified that, on the 30th day of June, 1914, at 10 o'clock a. m., or as soon thereafter as counsel can be heard at the Judge's chambers at Boise, Idaho, the defendant and cross-complainant, Pacific Coast Pipe Company, will ask the Judge of said Court to approve the said statement.

Dated June 16, 1914.

N. M. RUICK,  
Attorney for Defendant and Cross-complainant,  
Pacific Coast Pipe Company.

Service of the above and foregoing Notice of Lodgment of Statement on Appeal is hereby admitted this 16th day of June, 1914.

CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK,

By Richards & Haga, Attorneys.

KINGS HILL IRRIGATION & POWER COMPANY,

By McKeen F. Morrow, Secretary.

KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED,

By McKeen F. Morrow, Secretary.

GLENN'S FERRY IRRIGATION COMPANY, LIMITED,

By McKeen F. Morrow, Secretary.

STATE OF IDAHO,

By John M. Haines, Governor.

B. S. Crow, Attorney.

CRASTER FARM & ORCHARD COMPANY,

By J. W. Slick, Sec. and Treas.

T. S. Risser, Attorney.

MINNEAPOLIS STEEL AND MACHINERY COMPANY,

By Fremont Wood,

Dean Driscoll, Attorneys.

F. E. WILSON, THOMAS TRATHEN, JULIUS SIGMUND, O. E. GRANIER, M. W. STOFFORD, W. J. HERSEY, C. L. HENRY, HENRY KRAUTH, JAS. T. WADDELL, FRED MARHAFFER, H. F. KOCH, JOHN LADD, J. H. RUSSELL, J. C. A. PEICHELL, GEO. LEERIGHT, A. A. ATHA, JOS. N. BERNT AND JOE KENNAUGH,

By B. S. CROW, Their Attorney.

C. R. SHAW,

Edwin Snow, Attorney for C. R. Shaw.

Service of the above and foregoing Notice of Lodgment of Statement on Appeal is hereby admitted this 17th day of June, 1914.

KINGS HILL IRRIGATION & POWER COMPANY,

By F. B. Ebbert, Attorney.

GLENNS FERRY CANAL COMPANY, LIMITED,

By F. B. Ebbert, Attorney.

KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED,

By F. B. Ebbert, Attorney.

I have served this writ within my district in the following manner, to-wit: Upon the within named F. B. Ebbert, Attorney for Kings Hill Irrigation & Power Company, Glenns Ferry Canal Company, Limited, and Kings Hill Extension Irrigation Company, Limited, by delivering a true copy of same to him this 7th day of June, A. D. 1914, at Chicago, Illinois.

JOHN J. BRADLEY,

Marshal's fees.

U. S. Marshal.

1 service . . . \$2.00

By M. T. Giblin, Deputy.

1 mile . . . . . .06

---

\$2.06

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*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee,

Complainant,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation, GLENN'S FERRY  
CANAL COMPANY, LIMITED, a Corporation,  
PACIFIC COAST PIPE COMPANY, a Corpora-  
tion, KINGS HILL EXTENSION IRRIGATION  
COMPANY, LIMITED, a Corporation MINNE-  
APOLIS STEEL & MACHINERY COMPANY,  
a Corporation, and C. R. SHAW,

Defendants,

AND

THE STATE OF IDAHO, on the relation of John  
M. Haines, Governor, Joseph Peterson, Attorney  
General, Wilfred L. Gifford, Secretary of State,  
Grace M. Shepherd, Superintendent of Public In-  
struction, and Fred Huston, State Auditor, con-  
stituting the State Board of Land Commissioners  
of the State of Idaho, F. E. WILSON ET AL., and  
CRASTER FARM & ORCHARD COMPANY,

Interveners.

*Petition for Appeal With Prayer for Severance.*

The above named defendant and cross-complain-  
ant, Pacific Coast Pipe Company, conceiving itself  
aggrieved by the decree made and entered on the  
15th day of January, 1914, in the above entitled

cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the Assignment of Errors, which is filed herewith, and it prays that this appeal be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, State of California.

And your petitioner further prays that the proper order touching the security to be required of it to perfect its appeal be made.

And it further says that the defendants, Kings Hill Irrigation & Power Company, Glenns Ferry Canal Company, Limited, Kings Hill Extension Irrigation Company, Limited, Minneapolis Steel & Machinery Company and C. R. Shaw, and the defendants and interveners, the State of Idaho, Craster Farm & Orchard Company, F. E. Wilson, Thomas Trathen, Julius Sigmund, O. E. Granier, M. W. Stoford, W. J. Hersey, C. L. Henry, Henry Krauth, Jas. T. Waddell, Fred Marhafer, H. F. Koch, John Ladd, J. H. Russell, J. C. A. Peichell, Geo. Leeright, A. A. Atha, Jos. N. Bernt and Joe Kennaugh, and each of them, were duly notified in writing to join with the undersigned to prosecute an appeal in the above entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment

in said cause rendered on the 15th day of January, 1914, or that they would be deemed to have acquiesced in the said judgment and the undersigned will prosecute said appeal without joining them as a party or parties therein.

N. M. RUICK,  
Attorney for Defendant and Cross-complainant, Pacific Coast Pipe Company.

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*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee,

Complainant,

VS.

KINGS HILL IRRIGATION & POWER COMPANY, a Corporation, GLENN'S FERRY CANAL COMPANY, LIMITED, a Corporation, PACIFIC COAST PIPE COMPANY, a Corporation, KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED, a Corporation, MINNEAPOLIS STEEL AND MACHINERY COMPANY, a Corporation, and C. R. SHAW,

Defendants,

AND

THE STATE OF IDAHO, on the relation of John M. Haines, Governor, Joseph Peterson, Attorney General, Wilfred L. Gifford, Secretary of State, Grace M. Shepherd, Superintendent of Public Instruction, and Fred Huston, State Auditor, con-

stituting the State Board of Land Commissioners of the State of Idaho, F. E. WILSON ET AL., and CRASTER FARM & ORCHARD COMPANY,

Interveners.

*Assignment of Errors.*

*Comes Now* the defendant and cross-complainant, Pacific Coast Pipe Company, by N. M. Ruick, Esq., its solicitor, and says that the decree entered in the above cause on the 15th day of January, 1914, is erroneous and unjust to this defendant and cross-complainant and that, in the records and proceedings in the above entitled cause, there is manifest error in this, to-wit:

I.

The Court erred in sustaining the objection of the complainant, Continental & Commercial Trust & Savings Bank, Trustee, and of the defendant, Minneapolis Steel & Machinery Company, to the testimony offered by the defendant and cross-complainant, Pacific Coast Pipe Company, in support of the allegations of its cross-complaint.

II.

The Court erred in sustaining the motion of the complainant, Continental & Commercial Trust and Savings Bank, Trustee, and of defendant, Minneapolis Steel & Machinery Company, to strike out the testimony offered by the defendant and cross-complainant, Pacific Coast Pipe Company, in support of the allegations of its cross-complaint, which tes-



timony had been received in evidence, subject to the objection of said complainant and of said defendant, Minneapolis Steel & Machinery Company.

### III.

The Court erred in holding and deciding that it was not necessary for the complainant to plead in answer to the cross-complaint of defendant, Pacific Coast Pipe Company; that the said Pacific Coast Pipe Company had lost its lien by reason of the failure of said Pacific Coast Pipe Company to, within six months after its claim of lien had been filed, commence an action in a proper court against said complainant, to enforce its said lien.

### IV.

The Court erred in holding and deciding that the mechanic's lien of this defendant and cross-complainant, Pacific Coast Pipe Company, became and was inoperative and void by reason of the failure of said Pacific Coast Pipe Company, within six months after its claim of lien had been filed, to commence an action against said complainant or to make complainant a party defendant in its action to enforce said lien.

### V.

The Court erred in holding and deciding that the lien of defendant and cross-complainant, Pacific Coast Pipe Company, set out in its cross-complaint, became and was void by reason of the failure of said cross-complainant, within six months after its claim of lien had been filed, to make said complainant, Con-

tinental & Commercial Trust & Savings Bank, as Trustee, a party to its action to enforce said lien.

## VI.

The Court erred in holding that it was necessary to the validity of the lien claimed by defendant and cross-complainant, Pacific Coast Pipe Company, set up in its cross-complaint, within six months after such claim of lien had been filed, to make the complainant, Continental & Commercial Trust & Savings Bank, as Trustee, a prior lien holder on the said premises, a party to the action brought by said Pacific Coast Pipe Company against the owner of the property in question to enforce said lien, or to commence, within said six months, an action in a proper court against said Continental & Commercial Trust & Savings Bank, as Trustee, complainant herein, to enforce said lien.

## VII.

The Court erred in holding and deciding that it was and is not sufficient to the validity of cross-complainant's lien that it, Pacific Coast Pipe Company, shall have, as shown by the evidence in this case, within six months after its claim of lien had been filed, commenced on action in a proper court against the owner of the property to enforce such lien.

## VIII.

The Court erred in holding and deciding that it was necessary to the validity of the lien of cross-complainant, Pacific Coast Pipe Company, set out in its cross-complaint, that the said cross-complainant

should have, within six months after its claim of lien had been filed, commenced an action against all persons against whose interests the said lien was asserted.

### IX.

That said decree is erroneous and unjust to defendant and cross-complainant, Pacific Coast Pipe Company, in that it decrees that the right and interest of the Pacific Coast Pipe Company sought to be asserted in this action by cross-bill is junior and inferior to the rights and interests of the complainant in and to the property covered by said lien and described in said trust deed and the amendment thereto and that the complainant is entitled to a foreclosure of its lien created by said trust deed for the payment to it of all such monies and sums as are secured thereby and is entitled to receive payment in full for all such sums before any sum from the proceeds of the sale of said property shall go to said cross-complainant, Pacific Coast Pipe Company.

### X.

Said decree is further erroneous and unjust to the defendant and cross-complainant, Pacific Coast Pipe Company, in that it orders and decrees that the purchaser of said property described in the bill of complaint and in the cross-complaint of defendant, Pacific Coast Pipe Company, at the sale under said decree, shall possess and hold the said property free and discharged from all rights, claims and liens of the defendant, Pacific Coast Pipe Company.

## XI.

The Court erred in entering judgment and decree herein in favor of complainant and against the defendant and cross-complainant, Pacific Coast Pipe Company, and the said decree so made, filed and entered herein on the 15th day of January, 1914, is erroneous and against the just rights of defendant and cross-complainant, Pacific Coast Pipe Company, herein, for the reasons, to-wit:

(a) Because it appears from the evidence that the lien of said Pacific Coast Pipe Company, set up in its cross-complaint, was and is prior and superior to the lien created by the trust deed set out in the bill of complaint.

(b) That it appears from the evidence that the irrigation works described in the bill of complaint and in the cross-complaint of defendant, Pacific Coast Pipe Company, were constructed by the Kings Hill Irrigation & Power Company over, along and across and upon public lands of the United States and that the completion of said canals and other structures upon which said respective liens were claimed, including the main canal and distribution system of the works so constructed, was essential and necessary to the securing to said Kings Hill Irrigation & Power Company of a right of way therefor over said public lands of the United States and essential and necessary to the securing to said Kings Hill Irrigation & Power Company of a right, title or interest in and to such right of way; and that said



Kings Hill Irrigation & Power Company had acquired no right, title or interest whatsoever in and to said right of way prior to the furnishing by said cross-complainant of the materials referred to in the cross-complaint, and for which its lien was and is claimed, and their actual use in the construction and completion of the canals and works referred to, being the canals, structures and irrigation works set out and described in the cross-complaint and in the bill of complaint herein of the Continental & Commercial Trust & Savings Bank, as Trustee.

(c) Because the evidence shows that the lien for the materials furnished by defendant and cross-complainant, Pacific Coast Pipe Company, as set out in the cross-complaint, to be used in the construction of the irrigation works described in the bill of complaint of complainant, and which were actually so used, was and is prior and superior to the lien of the trust deed and mortgage set out in said original bill of complaint in this action.

(d) Because the Court directed the entry of a decree in favor of complainant, Continental & Commercial Trust & Savings Bank, as Trustee, against the defendant and cross-complainant, Pacific Coast Pipe Company.

N. M. RUICK,

Attorney and Solicitor for Defendant and Cross-complainant, Pacific Coast Pipe Company. Residence, Boise, Idaho.

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*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee,

Complainant,

VS.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation, GLENN'S FERRY  
CANAL COMPANY, LIMITED, a Corporation,  
PACIFIC COAST PIPE COMPANY, a Corpora-  
tion, KINGS HILL EXTENSION IRRIGATION  
COMPANY, LIMITED, a Corporation, MINNE-  
APOLIS STEEL & AND MACHINERY COM-  
PANY, a Corporation, and C. R. SHAW,

Defendants,

AND

THE STATE OF IDAHO, on the relation of John  
M. Haines, Governor, Joseph Peterson, Attorney  
General, Wilfred L. Gifford, Secretary of State,  
Grace M. Shepherd, Superintendent of Public In-  
struction, and Fred Huston, State Auditor, con-  
stituting the State Board of Land Commissioners  
of the State of Idaho, F. E. WILSON ET AL., and  
CRASTER FARM & ORCHARD COMPANY,

Interveners.

*Order Allowing an Appeal and Severance.*

This day came Pacific Coast Pipe Company, de-  
fendant and cross-complainant above named, and  
presented its petition for an appeal and an assign-

ment of errors accompanying same, which petition, upon consideration of the court, is hereby allowed, and the court allows an appeal to the United States Circuit Court of Appeals for the Ninth Circuit on the filing of a bond in the sum of Five Hundred (\$500.00) Dollars, with good and sufficient security, to be approved by the court.

And it further appearing that the Kings Hill Irrigation & Power Company, Glenns Ferry Canal Company, Limited, Kings Hill Extension Irrigation Company, Limited, Minneapolis Steel & Machinery Company and C. R. Shaw, and the defendants and interveners, the State of Idaho, Craster Farm & Orchard Company, F. E. Wilson, Thomas Trathen, Julius Sigmund, O. E. Granier, M. W. Stofford, W. J. Hersey, C. L. Henry, Henry Krauth, Jas. T. Waddell, Fred Marhafer, H. F. Koch, John Ladd, J. H. Russell, J. C. A. Peichell, Geo. Leeright, A. A. Atha, Jos. N. Bernt and Joe Kennaugh, and each of them, were duly notified in writing to join with the said defendant and cross-complainant to prosecute said appeal or they would be deemed to have acquiesced in the said judgment and the said defendant would prosecute said appeal without joining them or either of them as a party or parties.

And it further appearing that none of said parties has appeared, but has severed itself and themselves in their defense in this court, the said Pacific Coast Pipe Company, defendant and cross-complainant, is hereby granted its appeal as aforesaid and its inter-

ests are severed in said appeal from the other defendants and cross-complainants herein.

Dated June 27th, 1914.

FRANK S. DIETRICH,  
District Judge.

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*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee,

Complainant,

vs.

KINGS HILL IRRIGATION & POWER COMPANY, a Corporation, GLENN'S FERRY CANAL COMPANY, LIMITED, a Corporation, PACIFIC COAST PIPE COMPANY, a Corporation, KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED, a Corporation, MINNEAPOLIS STEEL & MACHINERY COMPANY, a Corporation, and C. R. SHAW,

Defendants,

AND

THE STATE OF IDAHO, on the relation of John M. Haines, Governor, Joseph Peterson, Attorney General, Wilfred L. Gifford, Secretary of State, Grace M. Shepherd, Superintendent of Public Instruction, and Fred Huston, State Auditor, constituting the State Board of Land Commissioners of the State of Idaho, F. E. WILSON ET AL., and CRASTER FARM & ORCHARD COMPANY,

Interveners.



*Bond on Appeal.*

*Know All Men by These Presents* that the National Surety Company, a corporation, duly organized under the laws of the State of New York and duly qualified and authorized to do business and to become surety on bonds within the State of Idaho, acknowledges itself to be indebted to the Continental & Commercial Trust & Savings Bank, as Trustee, appellee in the above cause, in the sum of Five Hundred (\$500.00) Dollars, conditioned that, whereas, on the 15th day of January, 1914, in the District Court of the United States, for the District of Idaho, in the suit pending in that court wherein the Continental & Commercial Trust & Savings Bank, as Trustee, was plaintiff and the Kings Hill Irrigation & Power Company, Pacific Coast Pipe Company et al., were defendants, a decree was rendered and entered against the said Pacific Coast Pipe Company and, the said Pacific Coast Pipe Company having obtained an appeal to the United States Circuit Court of Appeals of the Ninth Circuit, and filed a copy thereof in the office of the Clerk of the Court, to reverse the said decree and a citation having been directed to the said Continental & Commercial Trust & Savings Bank, as Trustee, citing and admonishing it to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, State of California, on the 27th day of July, 1914:

*Now, Therefore,* if the said Pacific Coast Pipe Company shall prosecute its said appeal to effect and

answer all costs, if it shall make its plea good, then the above obligation will be void, otherwise to remain in full force and virtue.

NATIONAL SURETY COMPANY,

By L. W. Ensign, Attorney-in-fact.

(Seal.)

Approved: Frank S. Dietrich, District Judge.

(Endorsed): Filed June 27, 1914. A. L. Richardson, Clerk.

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*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee,

Complainant,

vs.

KINGS HILL IRRIGATION & POWER COMPANY, a Corporation, GLENNS FERRY CANAL COMPANY, LIMITED, a Corporation, PACIFIC COAST PIPE COMPANY, a Corporation, KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED, a Corporation, MINNEAPOLIS STEEL AND MACHINERY COMPANY, a Corporation, and C. R. SHAW,

Defendants,

AND

THE STATE OF IDAHO, on the relation of John M. Haines, Governor, Joseph Peterson, Attorney General, Wilfred L. Gifford, Secretary of State,

Grace M. Shepherd, Superintendent of Public Instruction, and Fred Huston, State Auditor, constituting the State Board of Land Commissioners of the State of Idaho, F. E. WILSON ET AL., and CRASTER FARM & ORCHARD COMPANY,  
Intervenors.

*Stipulation Relative to Record on Appeal.*

It is hereby stipulated and agreed by and between the Pacific Coast Pipe Company, appellant, and the Continental & Commercial Trust & Savings Bank, as Trustee, appellee, through their respective solicitors, that, in order to save expense in the printing and certification of the record and to avoid encumbering the record with papers and documents not pertinent to the consideration on appeal, the following portions of the record and no more shall be transcribed, certified and transmitted to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit by the Clerk of the United States District Court, for the District of Idaho, under the appeal taken by the said appellant herein and shall be included in the printed record on said appeal, to-wit:

1. Bill of Complaint of Continental & Commercial Trust and Savings Bank, as Trustee.
2. Answer of Pacific Coast Pipe Company to Bill of Complaint.
3. Answer of Minneapolis Steel & Machinery Company to Complaint.
4. Cross-bill of Pacific Coast Pipe Company.

5. Supplemental Cross-bill of Pacific Coast Pipe Company.

6. Answer to Continental & Commercial Trust & Savings Bank, Trustee, to Cross-bill of Pacific Coast Pipe Company.

7. Answer of Minneapolis Steel & Machinery Company to Cross-complaint of Pacific Coast Pipe Company.

7½. Answer of Glenns Ferry Canal Co. Ltd. to Cross-complaint of Pacific Coast Pipe Company.

8. Statement on appeal under Equity Rule 75 (b).

9. Opinion of Court filed in said cause.

10. Decree.

11. All papers filed for perfecting the appeal:

(a) Summons to join in appeal, with admission or return of service.

(b) Notice of Lodgment of Statement on

Appeal.

(c) Petition for Appeal and Severance.

(d) Assignment of Errors.

(e) Order allowing appeal with severance.

(f) Bond on Appeal.

(g) Citation and all orders made in connection therewith, with all admissions or returns of service of any of said papers.

12. This Stipulation.



It is further stipulated and agreed that all exhibits introduced in the above entitled cause, including the depositions of witnesses, shall be transmitted to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit before the hearing of the cause in said court and the same may be used upon the argument upon the hearing of said cause in said court and shall be considered as a part of the Record on Appeal therein as fully and to the same extent as if transcribed and printed in the record.

It is further stipulated that it shall not be necessary to reproduce or print in the Record on Appeal any maps introduced in evidence on the trial of said cause or attached to the depositions therein, neither shall it be necessary to copy into the record or to certify or print therein the First Mortgage and Deed of Trust executed by the Kings Hill Irrigation & Power Company to the American Trust and Savings Bank, Trustee (now the said Continental & Commercial Trust & Savings Bank, Trustee), but the copy thereof attached to the deposition of W. P. Kopf, and others, taken on behalf of complainant, shall be transmitted to the Clerk of said Circuit Court of Appeals, as is hereinbefore provided, and the said copy of said First Mortgage and Deed of Trust shall be considered in the place of the original as a part of the Record on Appeal therein as fully and to the same extent as if transcribed and printed in the record.

Appellant shall have the right, and it may be so required by appellee, if deemed necessary and approved by the Judge of said District Court or the Circuit

Court of Appeals, to print as part of the Record on Appeal any exhibit and any other part of the record not hereby expressly authorized to be transmitted and printed.

Dated this 22nd day of June, 1914.

MAYER, MEYER, AUSTRIAN & PLATT,  
RICHARDS & HAGA,

Solicitors for Complainant and Appellee,  
Continental & Commercial Trust & Savings  
Bank, Trustee.

N. M. RUICK,

Solicitor for Defendant, Cross-complainant  
and Appellant, Pacific Coast Pipe Co.

---

*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee,

Complainant,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation, GLENN'S FERRY  
CANAL COMPANY, LIMITED, a Corporation,  
PACIFIC COAST PIPE COMPANY, a Corpora-  
tion, KINGS HILL EXTENSION IRRIGATION  
COMPANY, LIMITED, a Corporation, MINNE-  
APOLIS STEEL & MACHINERY COMPANY, a  
Corporation, and C. R. SHAW,

Defendants,

AND

THE STATE OF IDAHO, on the relation of John M. Haines, Governor, Joseph Peterson, Attorney General, Wilfred L. Gifford, Secretary of State, Grace M. Shepherd, Superintendent of Public Instruction, and Fred Huston, State Auditor, constituting the State Board of Land Commissioners of the State of Idaho, F. E. WILSON ET AL., and CRASTER FARM & ORCHARD COMPANY,  
Intervenens.

*Praecipe to Clerk for Transcript on Appeal.*

TO THE CLERK OF SAID COURT:

*You will please* incorporate the following portions of the record in the above entitled cause into the transcript on the appeal in said cause to the United States Circuit Court of Appeals, to-wit:

1. Bill of Complaint of Continental & Commercial Trust & Savings Bank, as Trustee.
2. Answer of Pacific Coast Pipe Company to Bill of Complaint.
3. Answer of Minneapolis Steel & Machinery Company to Complaint.
4. Cross-bill of Pacific Coast Pipe Company.
5. Supplemental Cross-bill of Pacific Coast Pipe Company.
6. Answer of Continental & Commercial Trust and Savings Bank, Trustee, to Cross-bill of Pacific Coast Pipe Company.
7. Answer of Minneapolis Steel & Machinery

Company to Cross-complaint of Pacific Coast Pipe Company.

71½. Answer of Glenns Ferry Canal Company, Ltd., to Cross-complaint of Pacific Coast Pipe Company.

8. Statement on appeal under Equity Rule 75 (b).

9. Opinion of Court filed in said cause.

10. Decree.

11. All papers filed for perfecting the appeal:

(a) Summons to join in appeal, with admission or return of service.

(b) Notice of Lodgment of Statement on Appeal.

(c) Petition for Appeal and Severance.

(d) Assignment of Errors.

(e) Order allowing appeal with severance.

(f) Bond on Appeal.

(g) Citation and all orders made in connection therewith, with all admissions or returns of service of any of said papers.

12. Stipulation as to record on appeal.

13. This praecipe.

N. M. RUICK,

Attorney for Defendant, Cross-complainant  
and Appellant, Pacific Coast Pipe Company.

Service of the foregoing praecipe, with receipt of



a copy of the same is hereby admitted this 1st day of July, 1914.

MAYER, MEYER, AUSTRIAN & PLATT,  
RICHARDS & HAGA,

Solicitors for Complainant and Appellee,  
Continental & Commercial Trust & Savings  
Bank.

---

*In the District Court of the United States, for the  
District of Idaho, Southern Division.*

CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK,

Complainant,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, PACIFIC COAST PIPE COMPANY ET  
AL.,

Defendants.

*Citation.*

UNITED STATES OF AMERICA TO CONTIN-  
ENTAL & COMMERCIAL TRUST AND SAV-  
INGS BANK, AS TRUSTEE, GREETING:

You are hereby notified that, in a certain case in equity, in the United States District Court, in and for the District of Idaho, wherein Continental & Commercial Trust and Savings Bank, as Trustee, is complainant; Kings Hill Irrigation & Power Company, Glenns Ferry Canal Company, Limited, Pacific Coast Pipe Company, Kings Hill Extension Irrigation Company, Limited, Minneapolis Steel &

Machinery Company and C. R. Shaw, are defendants; and the State of Idaho, on the relation of John M. Haines, Governor, Joseph Peterson, Attorney General, Wilfred L. Gifford, Secretary of State, Grace M. Shepherd, Superintendent of Public Instruction, and Fred Huston, State Auditor, constituting the State Board of Land Commissioners of the State of Idaho, and F. E. Wilson, Thomas Trathen, Julius Sigmund, O. E. Granier, M. W. Stofford, W. J. Hersey, C. L. Henry, Henry Krauth, Jas. T. Waddell, Fred Marhafer, H. F. Koch, John Ladd, J. H. Russell, J. C. A. Peichell, Geo. Leeright, A. A. Atha, Jos. N. Bernt and Joe Kennaugh, were defendants and interveners, an appeal has been allowed the defendant and cross-complainant, Pacific Coast Pipe Company, herein, to the United States Circuit Court of Appeals of the Ninth Circuit.

You are hereby cited and admonished to be and appear in said court at San Francisco, State of California, thirty (30) days after the date of this citation to show cause, if any there be, why the decree appealed from should not be corrected and speedy justice done the parties in that behalf.

*Witness* the Honorable Frank S. Dietrich, of the United States, District of Idaho, this 27th day of June, 1914.

FRANK S. DIETRICH,

(Seal)

United States District Judge.

Attest: A. L. Richardson, Clerk.

Service of a copy of the above and foregoing cita-

tion, together with receipt of a copy thereof, is hereby admitted this 29th day of June, 1914.

MAYER, MEYER, AUSTRIAN & PLATT,  
RICHARDS & HAGA,

Solicitors for Complainant, Continental &  
Commercial Trust & Savings Bank, as  
Trustee.

Service of the above and foregoing Citation, by receipt of a copy thereof, is hereby admitted this 30th day of June, 1914.

KINGS HILL IRRIGATION & POWER COMPANY,

By McKeen F. Morrow, Secretary.

KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED.

By McKeen F. Morrow, Secretary.

GLENNS FERRY IRRIGATION COMPANY, LIMITED,

By McKeen F. Morrow, Secretary.

STATE OF IDAHO,

By ....., Governor.

B. S. Crow, Attorney.

CRASTER FARM & ORCHARD COMPANY,

By ....., Sec. and Treas.

T. S. RISSER, Attorney.

MINNEAPOLIS STEEL & MACHINERY COMPANY,

By Fremont Wood and

Dean Driscoll, Attorneys.

F. E. WILSON, THOMAS TRATHEN, JULIUS  
SIGMUND, O. E. GRANIER, M. W. STOFFORD,

W. J. HERSEY, C. L. HENRY, HENRY KRAUTH, JAS. T. WADDELL, FRED MARHAFFER, H. F. KOCH, JOHN LADD, J. H. RUSSELL, J. C. A. PIECHELL, GEO. LEERIGHT, A. A. ATHA, JOS. N. BERNT, and JOE KENNAUGH,

By B. S. Crow, their Attorney.

EDWIN SNOW,  
Attorney for C. R. Shaw.

Service of the above and foregoing citation, by receipt of a copy thereof, is hereby admitted this 3d day of July, 1914.

KINGS HILL IRRIGATION & POWER COMPANY,

By F. B. Ebbert, Attorney.

GLENNS FERRY CANAL COMPANY, LIMITED,

By F. B. Ebbert, Attorney.

KINGS HILL EXTENSION IRRIGATION COMPANY, LIMITED,

By F. B. Ebbert, Attorney.

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### RETURN TO RECORD.

And thereupon it is ordered by the Court that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

Attest:

A. L. RICHARDSON,  
Clerk.



*In the District Court of the United States for the  
District of Idaho, Southern Division.*

CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee,

Complainant,

vs.

KINGS HILL IRRIGATION & POWER COM-  
PANY, a Corporation, GLENN'S FERRY CA-  
NAL COMPANY, LIMITED, a Corporation, PA-  
CIFIC COAST PIPE COMPANY, a Corporation,  
KINGS HILL EXTENSION IRRIGATION  
COMPANY, LIMITED, a Corporation, MINNE-  
APOLIS STEEL & MACHINERY COMPANY, a  
Corporation, and C. R. SHAW,

Defendants,

and

THE STATE OF IDAHO, on the relation of John  
M. Haines, Governor, Joseph Peterson, Attorney  
General, Wilfred L. Gifford, Secretary of State,  
Grace M. Shepherd, Superintendent of Public In-  
struction and Fred Huston, State Auditor, consti-  
tuting the State Board of Land Commissioners of  
the State of Idaho, F. E. WILSON, ET AL., and  
CRASTER FARM & ORCHARD COMPANY,

Interveners.

*Clerk's Certificate.*

I, A. L. Richardson, Clerk of the District Court of  
the United States for the District of Idaho, do here-  
by certify the foregoing transcript of pages num-  
bered from 1 to 480, inclusive, to be full, true and

correct copies of the Bill of Complaint of Continental & Commercial Trust & Savings Bank, as Trustee, Answer of Pacific Coast Pipe Company to Bill of Complaint, Answer of Minneapolis Steel & Machinery Company to Complaint, Cross-bill of Pacific Coast Pipe Company, Supplemental cross-bill of Pacific Coast Pipe Company, Answer of Continental & Commercial Trust & Savings Bank, Trustee, to Cross-bill of Pacific Coast Pipe Co., Answer of Minneapolis Steel & Machinery Company to Cross-complaint of Pacific Coast Pipe Company, Answer of Glens Ferry Canal Co., Ltd., to Cross-complaint of Pacific Coast Pipe Co., Statement on Appeal under Equity Rule 75 (b), Opinion of court filed in said cause, Decree, Summons to join in appeal, with admission or return of service, Notice of Lodgment of Statement on Appeal, Petition for Appeal and Severance, Assignment of Errors, Order allowing appeal with severance, Bond on appeal, Praecipe for transcript, Original Citation, Return to record and Clerk's certificate, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of <sup>532.78</sup>~~\$591.70~~ and that the same has been paid by the appellant.

Witness my hand and the seal of said Court affixed at Boise, Idaho, this 21st day of July, 1914.

A. L. RICHARDSON,  
Clerk.

United States  
Circuit Court of Appeals

For the Ninth Circuit.

CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee,

*Appellee,*

vs.

PACIFIC COAST PIPE COMPANY, a Corporation,  
*Appellant,*

and

KINGS HILL IRRIGATION & POWER COM-  
PANY, ET AL.,

*Defendants.*

BRIEF OF APPELLANT

Upon Appeal from the United States District Court  
for the District of Idaho, Southern Division.

MAYER, MEYER, AUSTRIAN & PLATT,  
RICHARDS & HAGA,

Solicitors for Appellee, Continental and Com-  
mercial Trust & Savings Bank, Trustee.

N. M. RUICK,

Solicitor for Appellant, Pacific Coast Pipe  
Company.

Filed

SYMS-YORK CO. PRINTERS & BINDERS, BOULDER, CO.

JAN 26 1915

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United States  
Circuit Court of Appeals  
For the Ninth Circuit

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CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee,

*Appellee,*

vs.

PACIFIC COAST PIPE COMPANY, a Corporation,

*Appellant,*

and

KINGS HILL IRRIGATION & POWER COM-  
PANY, ET AL.,

*Defendants.*

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**BRIEF OF APPELLANT**

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STATEMENT.

The Continental & Commercial Trust and Savings Bank (formerly the American Trust & Savings Bank), a corporation of the State of Illinois, as trustee, commenced an action in the District Court of the United States for the District of Idaho, Southern Division, against the Kings Hill Irrigation & Power Company, a corporation, Glenns Ferry Canal Company, Limited, a corporation, Pacific Coast Pipe Company, a corporation, and others, to foreclose a deed of trust or mortgage executed by

the principal defendant, Kings Hill Irrigation & Power Company, together with a certain amendment to said mortgage, which deed of trust or mortgage covered the property of the said Kings Hill Irrigation & Power Company known as the Kings Hill Irrigation works or system in Lincoln, Owyhee and Twin Falls Counties, in the State of Idaho.

The mortgage was executed November 2, 1908, and recorded December 9, 1908; the amendment thereto was executed March 1, 1909, and recorded on the 19th day of the same month.

Among other property covered by the mortgage were certain water right contracts entered into by the Irrigation Company with the settlers on the lands under the irrigation project, and shares of the capital stock of the Glenns Ferry Canal Company, Limited, representing the water rights so purchased, which contracts and shares of stock, it was alleged (Tr., pp. 25-41) had been assigned in writing and deposited with plaintiff by said Kings Hill Irrigation & Power Company, and were, at the time of said foreclosure, in the possession of the plaintiff.

This deed of trust or mortgage was given, and the contracts and shares of stock assigned, to secure an issue of bonds of the said Kings Hill Irrigation & Power Company to the amount of \$500,000.00. (Tr., pp. 12, 13). The complaint alleged, and the Court found, that bonds to the face value of \$358,400.00 were actually executed, certified by the trus-

tee, and negotiated in accordance with the terms and provisions of the deed of trust. (Tr., p. 13).

It is alleged that the company had failed to pay the interest or principal of these bonds as the same fell due. (Tr., p. 41). Whereupon, plaintiff, as such trustee, in accordance with the terms of said mortgage, brought this action to foreclose. The prayer of the complaint (Tr., p. 47) was for judgment for such sum as should be found to be due and that the same be declared a lien upon the premises and that the property be ordered sold to satisfy the mortgage.

The interest of the Minneapolis Steel & Machinery Company is confined to a steel wagon bridge which it had constructed across Snake River, the dividing line between Owyhee and Elmore Counties, and on which the Kings Hill Siphon pipe line, crossing the river at that point, rests. The court found that this bridge was not covered by the mortgage nor subject to the lien of the Pacific Coast Pipe Company and as no error is predicated upon this decision, the Minneapolis Steel & Machinery Company has no interest in this appeal.

The principal contention was between appellant and appellee as to the priority of their respective liens and this was treated by the trial court as the controlling question in the case (Opinion of Court, Tr., p. 416, 418).

This question was raised at the trial (Tr., p. 148) upon the objection by counsel for the trustee to the

introduction of any evidence on the part of the cross-complainant, Pacific Coast Pipe Company, "for the reason that it appears by the statement of counsel and from the cross-complaint on file that the suit (to enforce the mechanic's lien) was not commenced within the time required by the lien laws of this state (Idaho) and particularly under the provisions of Sec. 5118, Revised Codes, which requires that the suit may be commenced within six months after the lien is filed and, in any event, within two years after the last material was furnished or the last service rendered." This objection was, by the Court, overruled *pro forma* without prejudice to its consideration upon the submission of the case. (Tr., p. 149). Thereupon, appellant introduced its evidence in support of the allegations of its cross-complaint. At the conclusion of the testimony offered by cross-complainant, counsel for the trustee renewed his objection to the evidence and moved the court (Tr., p. 163) "to strike out all the evidence and testimony and proof offered on behalf of cross-complainant for the reason that the cross-bill does not state a cause of action and it appears therefrom that the lien which cross-complainant seeks to foreclose had expired by its own limitation and under the statute before the cross-bill was filed and that the suit to foreclose the lien is barred by Section 5118, of the Codes of this state (Idaho). And it further appears that, when the lien was foreclosed as against the Kings Hill Irrigation & Power Company, the mortgage of the trustee, which the trustee



is now foreclosing, was of record and the trustee was not made a party to the suit."

This motion was denied by the court on the same conditions as the objection to the introduction of any testimony was overruled. (Tr., p. 149). Both the objection and motion to strike out were sustained by the court upon its final decision of the case (Tr., pp. 416-418) and the ruling of the court thereon is assigned as error. (Tr., p. 458, I and II).

During the progress of the case, numerous parties, including the State of Idaho, were permitted, by the court, to intervene for the purpose of protecting rights claimed by them, but the rights of none other than plaintiff, Continental & Commercial Trust & Savings Bank, Trustee, and the defendant and cross-complainant, Pacific Coast Pipe Company, are involved in this appeal.

The defendant, Pacific Coast Pipe Company, answered the complaint, denying, for want of knowledge, all the allegations contained in paragraphs 4 to 23, both inclusive, and paragraphs 25 to 30, both inclusive, of the complaint, and in answer to paragraph 24 of the complaint, Pacific Coast Pipe Company denied that its interest in the property described in the complaint is subordinate to the lien of the deed of trust or mortgage set out in the complaint or the indebtedness secured or sought to be secured thereby.

At the same time, the Pacific Coast Pipe Company filed its cross-complaint (Tr., p. 65) wherein it alleged:

That it was, during the times mentioned in the cross-complaint, a corporation organized under the laws of the State of Washington with its principal place of business at Seattle in said State; that, during the times mentioned in the cross-complaint, the Kings Hill Irrigation & Power Company, defendant, was the owner of a certain ditch, flume and canal known as the "Kings Hill Canal," and the right of way therefor located in Lincoln, Twin Falls, Owyhee and Elmore Counties, State of Idaho, together with all appurtenances, describing the property in detail.

That between the 13th day of July, 1909, and the 2nd day of July, 1910, cross-complainant, at the request of said Kings Hill I. & P. Co., and as an original contractor, furnished, sold and delivered to said Kings Hill Irrigation & Power Company at Ballard Station, Seattle, State of Washington, certain materials to be used and which were actually used in construction and repair of the ditch, flume and canal therein described; that the material so furnished was of the reasonable value of \$12,363.24, payment to be made in cash, and, if not paid, interest to be charged after thirty days from date of invoice. The complaint contained an invoice of the materials with prices for the same and the credits to be given thereon, and alleged that there became due and owing from said Kings Hill I. & P. Co., to said Pacific Coast Pipe Co. on account of said materials, the sum of \$10,071.33, together with interest thereon.

That cross-complainant ceased to furnish such materials on July 2, 1910, and, within ninety days thereafter and within the time allowed by the laws of the State of Idaho, filed for record in the proper counties its claim of lien, duly verified, which was recorded in Elmore County, August 4th, in Owyhee County, August 5, 1910. Copy of said notice of lien was attached to the cross-complaint as Exhibit A; that, thereafter, on October 31, 1910, and within the time allowed by the laws of the State of Idaho, cross-complainant commenced an action and proceeding in the District Court for Elmore County, being a proper court in which to institute such proceedings to enforce its said lien, and summons was duly issued thereon and served on the Kings Hill I. & P. Co., defendant named in said action, which, thereupon, appeared in said action and procured said cause to be removed into the United States Circuit Court for the District of Idaho, Southern Division; that said Kings Hill I. & P. Co. filed its answer in said cause and such proceedings were thereafter had in said United States Circuit Court that a decree of said court was duly entered on the 30th day of December, 1911, by which it was ordered, adjudged and decreed that there was then due and owing to the said Pacific Coast Pipe Company, plaintiff in said action, by the defendants Kings Hill I. & P. Co., the sum of \$10,071.33, together with interest, costs and attorney's fees, and all amounting to \$11,671.52, and that plaintiff in said action and cross-complainant herein have and recover of the

said Kings Hill I. & P. Co., the sum last above named, with interest until paid, and costs, and that execution issue therefor.

It was further alleged that the judgment and decree in said cause ordered, adjudged and decreed that the said sum of \$11,671.52 with accrued interest, constituted a lien upon the ditch, flume, canal and right of way and all the property of the said Kings Hill I. & P. Co., described in the complaint in said action, being the same, or a part of the same, property referred to and described in the original bill of complaint of the Continental & Commercial T. & S. Bank in this action. It was further alleged in the cross-complaint that said sum of money was not paid as directed by said decree, whereupon, the Special Master appointed by the court for that purpose, after due advertisement, and on the 28th day of May, 1912, offered the said property at public sale to the highest bidder and sold the same to cross-complainant, who bid the amount of its lien; that, thereupon, upon the coming in of the report of the Special Master, said sale was, on July 9, 1912, by order of the court, duly confirmed.

Later, by leave of the court, a supplemental cross-complaint (Tr., p. 96) was filed by said Pacific Coast Pipe Company, alleging that, after the expiration of one year, the period allowed by law for redemption, no redemption having been had, the said Special Master executed to cross-complainant, a deed to the premises and that the same ever since



had been and then were the property of cross-complainant.

In its cross-complaint, defendant, Pacific Coast Pipe Company, further averred (Tr., p. 84) that, on May 1, 1908, the Kings Hill I. & P. Co. entered into a contract with the State of Idaho, whereby said company undertook and agreed with said State to construct an irrigation system or works for the purpose of irrigating and reclaiming certain arid public lands of the United States situated in the counties of Twin Falls, Owyhee and Elmore in the State of Idaho, under the provisions of the act of Congress approved August 18, 1894, commonly known as the Carey Act, and the acts amendatory thereof and the laws enacted by the State of Idaho in pursuance of the power granted by said acts of Congress. A copy of said contract is referred to and made a part of said cross-complaint and the same appears as Exhibit E in the Transcript at page 333. The cross-complaint describes the works so to be constructed, being the same as those thereinbefore in the cross-complaint described, and avers that the materials so sold and delivered by cross-complainant to said Kings Hill I. & P. Co., as thereinbefore in said cross-complaint set out, were to be used, and were actually used, in the construction and completion of the works required to be constructed and which were constructed under the terms of the contract referred to for the irrigation and reclamation of the lands referred to and described therein.

The cross-complaint then continues (Tr., p. 85):

“That said irrigation works so to be constructed and which were constructed by the said Kings Hill Irrigation & Power Company under said contract with the State of Idaho were constructed over, along, across and upon the public lands of the United States and lands of the State of Idaho and the completion of said canals and other structures, comprising the main canal and distribution system of the works so to be constructed, was essential and necessary to the securing to said Kings Hill Irrigation & Power Co. of a right of way therefor over said public lands of the United States and essential and necessary to the securing to said Kings Hill Irrigation & Power Co. of a right, title or interest in and to such right of way; and this cross-complainant avers that said Kings Hill Irrigation & Power Co. had and acquired no right, title or interest whatsoever in and to said right of way prior to the furnishing by this cross-complainant of the materials hereinbefore in this cross-complaint referred to and their actual use in the construction and completion of the canals and works referred to, being the canals, structures and irrigation works hereinbefore set out and described in this cross-complaint and in the original bill of complaint herein of the Continental & Commercial Trust & Savings Bank, as trustee.”

And “says that its lien for the materials so furnished to be used and which were actually used in

the said irrigation works and system, canals, pipe lines and other structures, as set out in the cross-complaint, was and is prior and superior to the lien of the trust deed and mortgage set out in said original bill of complaint in this action." It is alleged that, besides plaintiff, the other defendants in the action claim some right, title or interest in the property, but that the same is subsequent and subject to the prior right of cross-complainant. (Tr., p. 87). The prayer of the cross-complaint is that the several other parties to the action may be required to set forth the nature and extent of their several claims and that the court adjudge and decree that the said Kings Hill I. & P. Co. was and is indebted to cross-complainant on account of the materials so furnished in the sum set out in the cross-complaint; that said sum be decreed to be a lien against the irrigation works and canal system of said Kings Hill I. & P. Co., together with the appurtenances; that it be decreed that said lien was and is prior and superior to any right, title, claim or interest had, held claim or owned by the said Continental & Commercial T. & S. Bank, as trustee, and the several other defendants, and for a decree foreclosing said lien of cross-complainant as against the said defendants and each of them.

To this cross-complaint, plaintiff, Con. & Comm. T. & S. Bank, as trustee, and several of the defendants made answer. The answer of the former put in issue the material allegations of the cross-complaint, mainly by denial for want of knowledge, but

further and specifically denied (Tr., p. 107), upon information and belief "that said Kings Hill I. & P. Co. had acquired no right, title or interest whatsoever in and to said right of way prior to the furnishing of said materials in said cross-complaint referred to and their actual use in constructing and completing the canals and works referred to, being the canals, structures, erection and works set out and described in said cross bill and in the original bill of complaint of said trustee, and denies that the lien of said cross-complainant for any materials so alleged to have been furnished to be used and so alleged to have been actually used in the said irrigation works and system, canals, pipe lines and other structures, as set out in said cross-bill, was and is prior and superior to the lien of the trust deed or mortgage set out in said original bill of complaint, but, on the contrary, avers and alleges that any lien of said cross-complainant described in said cross-bill is inferior and subsequent to the lien of said trust deed or mortgage set out in said original bill of complaint.

The plaintiff, in its answer to said cross-bill, as a further and separate defense, alleged that cross-complainant had failed to comply with the laws of Idaho relative to foreign corporations doing business in the State, but this defense was not urged at the trial and no attempt was made to show that Pacific Coast Pipe Company, in its relations with the Kings Kill I. & P. Co. was "doing business within the State of Idaho."



The transaction, out of which the lien grew, was one in interstate commerce, based on a contract made in the state of Washington, from which the materials contracted for were shipped into the State of Idaho.

As a still further defense, the plaintiff, trustee, alleged that the decree of foreclosure claimed to have been recovered by cross-complainant against the Kings Hill I. & P. Co. is void and ineffectual by reason of the fact that, at the time said action was commenced, the Glenns Ferry Canal Company, Limited, was not made a party defendant thereto or therein.

#### SPECIFICATIONS OF ERROR.

The specifications of error upon which appellant will rely upon this appeal are substantially as set forth in assignments of error, Nos. I, II, III, VI and IX, which assignments are as follows:

“I. The Court erred in sustaining the objection of the complainant, Continental & Commercial Trust & Savings Bank, Trustee, and of the defendant, Minneapolis Steel & Machinery Company, to the testimony offered by the defendant and cross-complainant, Pacific Coast Pipe Company, in support of the allegations of its cross-complaint.” (Tr., p. 458).

“II. The Court erred in sustaining the motion of the complainant, Continental & Commercial Trust & Savings Bank, Trustee, and of defendant, Minneapolis Steel & Machinery Company, to strike out the testimony offered by the

defendant and cross-complainant, Pacific Coast Pipe Company, in support of the allegations of its cross-complaint, which testimony had been received in evidence, subject to the objection of said complainant and of said defendant, Minneapolis Steel & Machinery Company.” (Tr., p. 458).

“III. The Court erred in holding and deciding that it was not necessary for the complainant to plead in answer to the cross-complaint of defendant, Pacific Coast Pipe Company; that the said Pacific Coast Pipe Company had lost its lien by reason of the failure of said Pacific Coast Pipe Company to, within six months after its claim of lien had been filed, commence an action in a proper court against said complainant, to enforce its said lien.” (Tr., p. 459).

“VI. The Court erred in holding that it was necessary to the validity of the lien claimed by defendant and cross-complainant, Pacific Coast Pipe Company, set up in its cross-complaint, within six months after such claim of lien had been filed, to make the complainant, Continental & Commercial Trust & Savings Bank, as Trustee, a *subsequent* lien holder on the said premises, a party to the action brought by said Pacific Coast Pipe Company against the owner of the property in question to enforce said lien, or to commence, within said six months, an action in a proper court against said Continental & Commercial Trust & Savings Bank, as Trustee, com-

plainant herein, to enforce said lien.” (Tr., p. 460). (In the transcript, the word *subsequent* was, by clerical error, made to read *prior*.)

“IX. That said decree is erroneous and unjust to defendant and cross-complainant, Pacific Coast Pipe Company, in that it decrees that the right and interest of the Pacific Coast Pipe Company sought to be asserted in this action by cross-bill is junior and inferior to the rights and interests of the complainant in and to the property covered by said lien and described in said trust deed and the amendment thereto and that the complainant is entitled to a foreclosure of its lien created by said trust deed for the payment to it of all such monies and sums as are secured thereby and is entitled to receive payment in full for all such sums before any sum from the proceeds of the sale of said property shall go to said cross-complainant, Pacific Coast Pipe Company.” (Tr., p. 461).

The evidence offered in support of the cross-complaint, which was provisionally admitted by the court and later rejected and stricken out by the final decision of the court, is substantially as heretofore set out in our statement of facts. To avoid a restatement, we respectfully refer the court to that portion of our brief as containing the full substance of the evidence rejected and stricken out.

## ARGUMENT.

*Appellant's Priority Conceded.*

It is conceded in the opinion of the trial court that the appellant's lien, as a material man, has priority over appellee's mortgage.

The trial court has dwelt so insistently upon the rights of a mortgagee, that it seems proper here to make a word of explanation by way of preface as to the equities of the appellant, who furnished over ten thousand dollars worth of material toward the creation of the property to which appellee's mortgage subsequently attached.

Appellee's trust deed dated November 2, 1908, described a canal and irrigation system not yet in existence, which was to be constructed with the money derived from the sale of the bonds under the trust deed. The very purpose of the trust deed was to finance the project and to pay for material and labor necessary to create the system. The appellant furnished materials which became a part of the system, and it was entitled to be paid out of the money derived from the proceeds of the bonds. Upon the fundamental equities of the case, therefore, the appellant's lien entitles it to protection.

Appellant's priority was established under the rule announced by the United States Supreme Court in *Bear Lake and River Water Works and Irrigation Co. v. Garland*, 164 U. S. 1, 41 L. Ed. 327, 17 Sp. Ct. Rep. 7. In that case Mr. Justice Peckham, delivering the opinion of the court, says:



“The Bear Lake Company (mortgagor) \* \* \* never had any legal or equitable title to the land over or through which the ditch for the canal was dug as against the government until the ditch was completed. As the ditch was completed by the labor of the contractor and the very title of the mortgagor thereto was itself created by his labor, the lien attached to the property as it was created and came into being and arose coincident with the ownership of the ditch by the mortgagor and the property came into the hands of the mortgagor burdened with the lien which remains superior to that of the mortgage.” (164 U. S. 19).

Judge Taft, citing the Garland case, states the rule in these words:

“Where the legal or equitable title of the mortgagor ripens and is acquired only through the outlay or expenditure of another, under such circumstances that as between the other and the mortgagor, the former has a lien in equity upon the interest of the latter, the prior mortgage with an after-acquired property clause attaches only to the interest of the mortgagor subject to the same lien.”

Harris v. Youngstown Bridge Co., 33 C. C. A. 69; 90 Fed. 322, 329.

In the Garland case, the title of the mortgagor was acquired under Sec. 2339 and 2340, R. S. U. S., which make the vesting of title to a right-of-way contingent upon the completion of the canal.

In the case at bar, the title of the mortgagor, Kings Hill Irrigation and Power Company, to the right-of-way for its canal, is dependent upon the provisions of the Act of Congress commonly known as the "Carey Act," 6 Fed. Stat. Ann. 397, 398. No patent to the lands intended to be reclaimed nor any right-of-way on or over the same, nor any right, title or interest in the lands vests until the completion of the works necessary to reclaim the lands. 6 Fed. Stats. Ann. *supra*.

Evidence was introduced to show that some of the lands watered by the Kings Hill Irrigation system were lands taken up under the desert land act. These lands were not, however, described or identified and we are here only concerned with the Carey Act lands, to reclaim which was the main purpose of the contract between the federal government and the state, and the contract between the state and the mortgagor, the Kings Hill Irrigation and Power Company.

### *Brief Resume of Facts.*

The essential facts in the case may be summarized as follows:

(a) The mechanic's lien is prior to the mortgage.

(b) The lien statute, Sec. 5118 R. C. Idaho, provides a limitation of time within which the action to enforce the lien must be brought.

(c) The action to enforce the lien was commenced within the statutory time against the owner of the legal title to the property.

(d) The mortgagee was not made a party defendant in that action.

(e) The limitation having expired, the mortgagee now brings this action to foreclose his mortgage and makes the lien holder a party defendant.

(f) The mortgagee claims that the mechanic's lien has expired as against his mortgage by virtue of the limitation contained in the lien statute, Revised Codes, Idaho, Sec. 5118.

The statutes of Idaho which are pertinent are printed in an appendix at the end of this brief.

*The Issue: Is a Subsequent Mortgagee an Indispensable Party to a Lien Foreclosure Suit?*

The controlling question in the case and the one upon which the trial judge based his decision is stated by him as follows:

"The precise question \* \* \* is, whether or not a lien claimant under the mechanic's lien law of Idaho loses his priority of lien as against a junior mortgagee, by foreclosing his lien without bringing in and making a party to such foreclosure suit the mortgagee, the period provided by the statute in which proceedings may be commenced for the enforcement of the lien, expiring during the pendency of the suit." (Tr., p. 418).

This form of the question was phrased by the court in the companion case of *Utah Implement-Vehicle Co. v. Bowman*. In order, however, to call attention to one feature of the statute not discussed

by the court in that case and more accurately to apply the question to the facts in this case, we submit that the issue before this court may be properly stated as follows:

Whether or not a lien claimant under the Mechanic's Lien Law of Idaho, who has foreclosed his lien against the owner of the property within six months after the claim of lien had been filed (*the time not having been extended by the giving of credit*) loses his priority of lien as against a junior mortgagee by reason of his failure to make the mortgagee a party to the foreclosure suit within the six months' period.

### *Conflict of Authorities.*

Upon the issue presented by this case, there are two lines of decision which are entirely irreconcilable. This conflict of decision is partly due to a difference in the statutory provisions of the different states, but, in the main, it may be said that between the two conflicting theories, this court will have to decide which is supported by the better reasoning.

Appellee's theory, adopted by the trial court in the case at bar, is that a subsequent encumbrancer is an indispensable party defendant to a lien foreclosure suit. This conclusion is reached by a strict construction of the Mechanic's Lien Law, and where the litigation is between rival lien claimants purposely differentiates the practice from the general principles applicable to all liens.



The case most strongly relied on in support of the rule adopted by the trial court is *Davis v. Bartz*, 65 Wash. 395, 118 Pac. 334. Other cases in support of the same view are referred to in the decision of the court (Tr., p. 426, 427). However, the decision itself in the case at bar is perhaps the ablest presentation of the argument in favor of this view yet appearing in the reports. The reasoning in support thereof is confined strictly to the question of statutory interpretation.

*Abstract of Appellant's Contention.*

The other view, here contended for by appellant, we submit involves a natural and liberal construction of the Mechanic's Lien Law on the question of foreclosure, and applies to questions of priority among different lienors and the general principles of equity applicable to all liens.

A brief summary of the reasoning supporting this equitable theory may be stated as follows:

The suit to enforce the lien, having been commenced against the owner and builder within six months after the claim of lien was filed, the lien has become fixed as to time and extent and binding as an encumbrance upon the legal title.

The owner and builder is the only party against whose interest the lien can be asserted because it is that interest alone which is liable for the debt.

The only effect of making a subsequent encumbrancer a party to the lien foreclosure suit is to bar his equity of redemption, the only interest he has.

With one exception, the enforcement of the lien cannot operate to affect injuriously the interest of a subsequent encumbrancer because his sole interest in the property consists of an equity of redemption from the lien.

The exception just mentioned covers that class of cases wherein the lien is secured under such circumstances as would be fatal to it in a collateral attack upon the decree by third persons who are not parties to the record, e. g., for fraud or collusion.

The subsequent encumbrancer, if not made a party to the suit, is in no wise affected by it and may still exercise his *equity* of redemption after the *statutory* right to redeem has expired.

The subsequent encumbrancer, having taken his lien subject to the prior mechanic's lien, must redeem from such prior lien if he would now foreclose his mortgage.

The logic of this statement of the appellant's position is clearly shown in the historical development of the cases and statutes dealing with mechanic's liens.

The two earliest cases arose under statutes which provided for the enforcement of mechanic's liens by actions at law not by suits in equity. The subsequent mortgagee was there held not to be a necessary party to the action because his rights were all of an *equitable* nature and not cognizable in a court of law.

Howard v. Robinson, 59 Mass. 119;  
Thompkins v. Horton, 25 N. J. Eq. 284.

In the latter case, Chancellor Runyan assigns as "the reason why the act contains no provision for notice to encumbrancers is probably that it was not intended that the proceeding to enforce a lien should be a proceeding in equity but an easy and expeditious method at law." 25 N. J. E. 290.

Of similar import was the case of *State of Iowa v. Eads*, 15 Iowa 114, wherein the plaintiff sought to redeem from a prior mechanic's lien and indulged the assumption that "the rules and principles applicable and peculiar to the foreclosure of mortgages equally apply to the proceedings for the enforcement of a mechanic's lien."

The Court says:

"The analogy does not hold good. The former is a proceeding in equity, the rules of which require that, as the proceeding affects the land, all who have an interest therein and a *right to redeem from the mortgage*, such as junior mortgagees, although not indispensable, should be made parties thereto *if it be desired to cut off their equity of redemption*, which exists not only by the long established usages and rules of equity, but because, perhaps, of their being privies in estate. On the other hand, the enforcement of a mechanic's lien is a proceeding at law, *where no equity of redemption exists*, and we are not aware that it has ever been held to be necessary in such a proceeding that an encumbrancer by mortgage or other lien (except of the same kind), should be made parties thereto, while it

will be found, upon examination, that it has been held just to the reverse." (*Italics ours*). 25 N. J. Eq. 292.

This language was quoted with approval by Chancellor Runyan in *Thompkins v. Horton*, *supra*.

Subsequent to the case of *State v. Eads*, the mechanic's lien law of Iowa was revised and Section 1859 of the Revision reads:

"In all suits under this act, the parties to the controversy shall, and all other persons interested in the matter in controversy and in the property charged with the lien may, be made parties, but such as are not made parties shall not be bound by any such proceeding."

*Evans v. Tripp*, 35 Iowa 371.

In the Iowa cases, since the revision, the discussion proceeds upon the ground that it is important to inquire what the rights of the subsequent encumbrancer are and it is there determined that, since the mortgagee was not a proper party to this same proceeding in a court of law, his right to be heard in a court of equity is due to the fact that his estate in the property is not a *legal* but an *equitable* estate. The court then concludes that the remedy available to the mortgagee for the protection of this equitable estate is two-fold, to-wit:

First: He may redeem from the prior lien and then foreclose his mortgage.

Second: He may contest the validity of the de-



cree in the lien suit and, if successful, may then foreclose his mortgage.

Evans v. Tripp, *supra*.

Jones v. Hartsock, 42 Iowa 147.

Diddy v. Risser, 55 Iowa 699, 8 N. W. 665.

We will now take up these remedies separately:

## 1. MORTGAGEE'S RIGHT TO REDEEM FROM A PRIOR MECHANIC'S LIEN.

In those states whose decisions we have reviewed wherein the enforcement of a mechanic's lien was an action on the law side of the court, the Judges denied the analogy between an action to enforce the lien and a suit to foreclose a mortgage, but we find, in Iowa, when enforcement of mechanic's liens became a proceeding in equity, that the rules governing the foreclosure of mortgages, were adopted by the court as the rules governing the enforcement of mechanics' liens. This has been generally done by all the states wherein the enforcement of a mechanic's lien is a proceeding in equity (Idaho and Oregon Land Improvement Company v. Bradbury, (a case from Idaho,) 132 U. S. 509, 33 Law Ed. 433, 10 Supreme Court 177, Jensen v. Bumgarner, 25 Idaho 355, 137 Pac. 529,) and thus the solution of our present problem is dependent upon the theory of mortgages in force in the particular jurisdiction, the effect of which will be shown as the cases from each jurisdiction are discussed.

In Whitney v. Higgins, 10 Cal. 547, 70 Am. Dec. 748, Justice Field places a suit to enforce a me-

chanic's lien on the same basis as one to foreclose a mortgage and holds that the decrees in the two suits have exactly the same effect. He recognizes the rule that subsequent incumbrancers of the property not made parties to the foreclosure of the prior mortgage are in no wise affected and that the same is true of suits to enforce mechanic's liens. The conclusion he reaches is that the plaintiff mortgagee has the right to redeem from the mechanic's lien. In this ruling, Justice Fields holds that all subsequent incumbrancers of the property are possessed of an equity of redemption, as well as a right to redeem under the statute. In comparing the equity of redemption with the statutory right to redeem, he says that:

“Parties obtaining interests subsequent to the plaintiff and before suit brought, who are not made parties to such suit, possess both the equitable and statutory rights. They may redeem under the statute or they may file their bill in equity.”

70 Am. Dec. 753.

In the case at bar it has been sought to overthrow the force and logic of Justice Field's conclusions by reliance upon *Frates v. Sears*, 144 Cal. 246, 77 Pac. 905, and the importance which the trial court and counsel for appellees attach to this case justifies us, we think, in a somewhat extended consideration of this decision.

Let us test the logic of these two cases by the California theory of mortgages. That theory was first

exhaustively discussed by Justice Field in *McMillan v. Richards*, 9 Cal. 365, 407; 70 Am. Dec. 665, and his conclusions, approved by time and experience and applied in subsequent cases, are outlined by Prof. Pomeroy, as follows:

“In this method of treating mortgages, the conflict between the legal and equitable conceptions is entirely removed. Partly through the adoption of equitable doctrines by the law courts and partly through the operation of statutes, the legal theory of mortgages has been abandoned but the equitable theory has been left in full force, furnishing a single and uniform collection of rules recognized and administered, so far as necessary, alike by courts of law and of equity. The mortgage is not a conveyance nor does it confer upon the mortgagee any estate *in* the land. It creates a lien *on* the land or, in the apt language already quoted, ‘a potentiality to forfeit the land by proper process and condemn it for payment’ of the debt. The debt is the principal fact and the mortgage is wholly incidental or collateral thereto and intended to secure its payment. The right or interest of the mortgagee from being a legal estate is changed to an equitable right enforceable by an equitable proceeding; it is for all purposes and under all circumstances a personal asset; it may be assigned and passes to the mortgagee’s personal representatives on his death. \* \* \* The mortgagee’s interest being a mere lien, it is wholly destroyed and

the mortgagor's estate is left free and unencumbered by a payment of the debt secured by it at any time before the premises are actually sold under a decree of foreclosure; the estate does not then *revest* in the mortgagor, since it has never gone out of him. On the other hand, the mortgagor's interest, instead of being an equitable estate or right in equity to redeem the land from the mortgagee's ownership, is, for all purposes, under all circumstances and between all parties, the legal estate with all the incidents and qualifications of legal ownership but at the same time encumbered by or subject to the lien of the mortgage."

Pomeroy's Equity Jurisprudence 3, Ed.,  
Vol. 3, Sec. 1188.

The application of this theory of mortgages is shown in *Goodenow v. Ewer*, 16 Cal. 461, where it is held that proceedings in the nature of a suit to foreclose an equity of redemption held by a subsequent encumbrancer may undoubtedly be brought by the purchaser under the decree where such encumbrancer was not made a party to the suit to enforce the mortgage. This case shows that the rights of the mortgagor are such that the enforcement of the mortgage by suit is the direct assertion of a right of action against the mortgagor, but the rights of subsequent encumbrancers may be cut off by merely closing a door which equity has theretofore held open for their benefit, in other words, by foreclosing their equity of redemption. See also *Carpentier v. Bren-*



ham, 40 Cal. 221, Tuolumne Redemption Co. v. Sedgwich, 15 Cal. 516.

The effect of this theory of mortgages on lien proceedings in California is shown by the following cases, which cite *Whitney v. Higgins*, with approval and which sustain the following remarks made in *Montgomery v. Tutt*, 11 Cal. 307, 315:

“We do not think then that subsequent encumbrances are indispensable parties. If not made parties, their rights cannot be affected. They are not bound by the decree. Their equity of redemption from the purchaser continues and this they can assert at any time within the period allowed by the statutes of limitations.”

*Montgomery v. Tutt*, *supra*.

*Gamble v. Voll*, 15 Cal. 508.

*Lookout Lumber Co., v. Marion H. & B. Ry. Co.*, 109 N. Carolina 658, 14 S E 35.

In *Frates v. Sears*, the contest was between two mortgages, no mechanic's lien being involved. The first mortgage had been foreclosed by suit to which the second mortgagee was not a party and the property sold at judicial sale to the mortgagee, who afterward obtained a master's deed. After the statute of limitations had run upon the first mortgage as to the second mortgagee, the holder of the second mortgage brought his action to foreclose. The court granted him the relief he asked, the effect of the decision being to annihilate the first mortgage and all rights thereunder. This ruling is based upon the

authority of *Brandenstein v. Johnson*, 140 Cal. 29, 73 Pac. 744, which, in turn, cites *Lord v. Morris*, 18 Cal. 490.

The reasoning in this latter case is misapplied and wrongfully interpreted in *Frates v. Sears*, as will appear by a comparison of the two cases. In *Frates v. Sears*, the second mortgagee took his mortgage subject to, and with knowledge of, the first mortgage, on which the statute of limitations had not yet run. In *Lord v. Morris*, the purchaser from the mortgagor had purchased before the statute had run on the mortgage and before suit brought to foreclose, and the mortgagor had thereafter given a new promise. Under an early California rule, which is best discussed in *McCormick v. Brown*, 36 Cal. 180, 95 Am. Dec. 170, the action was upon the new promise and it is evident that the mortgagor, having sold the property, was no longer in a position to renew the mortgage. For this reason, the purchaser could successfully plead the statute of limitations.

In Idaho, a rule different from that of *McCormick v. Brown* prevails. The Idaho rule is that the statute of limitations does not extinguish the debt but merely operates to bar the remedy, and, therefore, where a new promise is relied upon to avoid the statute, the action is still upon the original debt and the new promise merely removes the bar of the statutes as to the remedy.

*Kelley v. Leachman*, 3 Idaho 629, 33 Pac.  
44.

In *Law v. Spence*, 5 Idaho 244, 48 Pac. 282, the case of *Lord v. Morris* is distinguished and is shown to be inapplicable to a similar state of facts in Idaho upon two grounds:

(1) "That (in the case of *Lord v. Morris*) the note was already barred by the statute when the new promise was made and the action was upon the new promise," and

(2) "That (in California) distinct actions lie upon the note, and mortgage and note."

5 Idaho 253.

Section 4520, Revised Codes of Idaho, provides that "there can be but one action for the recovery of any debt or the enforcement of any right secured by mortgage upon real estate or personal property, which action must be in accordance with the provisions of this chapter."

Under this section, the Idaho court holds that, so long as the debt is not barred, an action to foreclose the mortgage may be maintained.

*Kelley v. Leachman* and *Law v. Spence* were reaffirmed in *Moulton v. Williams*, 6 Idaho 424, 55 Pac. 1019, in which case the California rule is again distinguished from the Idaho rule. Whether or not *Frates v. Sears* is held to be good law, these Idaho cases throw us back upon the theory of *Whitney v. Higgins*, so far as Idaho is concerned and place this state in line with those decisions which follow the rule laid down by the United States Supreme Court in *Ewell v. Daggs*, 108 U. S. 143, 27 L. Ed. 682, 2

Supreme Court Rep. 408, the rule there announced by Mr. Justice Matthews being that a subsequent incumbrancer of real property may plead the statute of limitations to defeat the claim of a prior encumbrancer, but he must plead it *as between the parties to the debt*. This is also the rule in Kansas, as announced by Mr. Justice Brewer in *Schmucker v. Sibert*, 18 Kans. 104, 26 Am. St. Reps. 765, and in Nevada, as announced by this court in *Hanchett v. Blair*, 41 C. C. A. 76, 100 Fed. 817, wherein Judge Morrow cites, with approval, *Ewell v. Daggs*, *supra*.

The rule in Idaho, as thus pointed out, is that there is no limitation in the Idaho statutes as regards the mortgage, and, so long as the debt is not barred by the statute, an action will lie to enforce the mortgage. It may, perhaps, be argued that this rule is not applicable to a suit to enforce a mechanic's lien for the reason that, by the terms of Sec. 5118, Revised Codes of Idaho, the life of the lien is limited to a time certain unless suit be commenced to enforce such lien. However, this difference between the lien statute of Idaho and the mortgage statute of California does not produce the effect of bringing a mechanic's lien suit in Idaho within the rule announced in *Frates v. Sears*, but rather, it brings it within the rule of *Carpentier v. Brenham*, 40 Cal. 221.

In the case last cited, plaintiff was seeking to foreclose a subsequent mortgage upon real property. Prior to the commencement of the action, the prior mortgage had been foreclosed without making the



subsequent mortgagee a party. The mortgagee under the first mortgage was the purchaser at his foreclosure sale and defendants derived title from him. The defendant, Brenham, did not seek to prevent the enforcement of the subsequent mortgage but insisted that, before the plaintiff could maintain such action, he must redeem from the first mortgage; and such is the holding of the court in that case. The position of Brenham, defendant in that case, is exactly the position of the appellant in the case at bar, while the appellee here, the trustee under the mortgage, is in a position analagous to or identical with that occupied by the plaintiff in that case.

After alluding to the fact that a junior encumbrancer possesses the right to extinguish the senior encumbrance and that the enforcement of the junior encumbrance is dependent upon the extinguishment of the senior encumbrance, because it was taken upon that condition, the court says (p. 237) :

“But, if the junior mortgagee shall bring his senior into court, shall he be permitted to ignore his claims as senior mortgagee? The right then of the plaintiff as against the purchaser at the \* \* \* foreclosure sale was a right to redeem.

“A suit of foreclosure as against younger mortgagees is a suit to cut off the right of redemption and, if the plaintiff was not made a party defendant \* \* \* in the former suit, the right to redeem was unaffected by the decree and sale under it.”

The result of this is that, if a subsequent mortgagee be joined in a suit to enforce a prior mechanic's lien, the judgment therein as to him is a *decree foreclosing his equity of redemption and, in no sense, is it a judgment against his interests*, for the reason that he holds his interest subject to the prior lien and the enforcement of that lien deprives him of nothing. He still possesses the right to redeem under the statute and, upon the expiration of the time limited by the statute, his right of redemption is gone, but if, before that time expires, he desires to foreclose his mortgage, he must first redeem from the prior encumbrance and this, not because of any decree that has been rendered against him but because his right in the property is an *equity of redemption* and nothing more.

In other words, the nature of the mortgagee's action to collect his debt out of the property is determined by the nature and extent of his rights in the property.

For this reason the suit to enforce the lien, so far as the subsequent mortgagee is concerned, is merely a suit to foreclose the equity of redemption, that being the only judgment that can be had against him.

*De La Vergne Refrigerating Co. v. Montgomery Brewing Co.*, 6 C. C. C. A. 272, 57 Fed. 111.—This is the only federal decision directly in point, so far as counsel are advised. It is a decision by the Circuit Court of Appeals of the Fifth Circuit, construing the statutes of Alabama, which in effect, are the same as those of Idaho. The question there involved was iden-

tical with the case at bar—whether a mechanic's lien shall be deemed lost unless all persons, whether mechanics or other encumbrancers, interested in the property charged with the lien, are made parties to the suit for the enforcement thereof within the time limited by the statute. The court holds that a mechanic or materialman is authorized but not required to make encumbrancers parties defendant and says:

“If suit for the enforcement of the lien be commenced against the owner or proprietor within six months after the maturity of the indebtedness secured by it, the lien is not lost; and our opinion is that encumbrancers may, at any subsequent time, be made parties to the proceeding. The object of making them parties is to ascertain and adjust the *priorities* (emphasis is ours) in the property charged with the lien and to make the judgment in the proceeding binding on them. The effect of not making them parties is simply to exempt them from being concluded by the judgment. The statute declares, ‘such as are not made parties shall not be bound by the judgment.’ It seems clear to us that the effect of not making them parties is not to lose the lien.”

The Court continues:

“If these steps (for the perfection of the lien) be taken as prescribed, the lien becomes fixed as to time and extent and the amount of indebtedness for which it is security determined. These proceedings, however, do not bind any person in-

interested in the property charged with the lien, unless such person is made a party to the suit. Such person is not concluded by the judgment, which is evidence of the facts it ascertains only against parties to the record. But the lien ascertained and fixed by these proceedings is no less a lien although a priority between this and other liens or encumbrances on the property may have to be settled. The suit for the enforcement of the lien must be commenced within six months after the maturity of the indebtedness, which is a condition precedent to fixing the lien, but the settlement of the priority of liens is not limited to any such period."

*Gaines v. Childers (Ore.)*, 63 *Pac.* 487.—Notwithstanding that Section 415 of the Oregon statute provides:

"Any person having a lien subsequent to the plaintiff upon the same property, or any part thereof, \* \* \* shall be made a defendant in the case,"

the court holds

"If encumbrancers are not made parties to a suit to foreclose a lien they are, of course, in no respect bound by the decree or proceedings thereunder; but the decree itself is valid, and vests in the purchaser the legal right in a proper proceeding to compel such lien creditors to redeem."

Continuing, the court says:

"Persons holding liens upon the premises by



judgment or mortgage are not indispensable parties to such a suit (a suit to foreclose a mechanic's lien.) The only effect of not joining them with the owners of the premises is that the decree is not binding upon them and does not cut off or deprive them of the right of redemption. \* \* \*

"The failure, therefore, to make the plaintiff (mortgagee) a party to the suit brought by Woods to foreclose his lien did not render the lien or the right acquired thereunder invalid as to the plaintiff's mortgage but the purchaser at the sale under such decree obtained the legal title to the premises subject to the right of the plaintiff to redeem."

The trial court in the case at bar did not regard this case as in point (Tr. p. 426.) It is true the conclusion of the court might have been reached without necessarily determining the question involved in this appeal, but it is evident from an examination of the opinion that this was the decisive question in the case. There is no doubt that the Oregon Court has adopted the equitable rule here contended for.

Selwood v. Gray (Ore.), 5 Pac. 196.

Koerner v. Iron Works (Ore.), 58 Pac. 863.

*Monk v. Exposition Deep Water Pier Corp.* (Va. 1910), 68 S. E. 280.—In this case it was held that

"Though proper parties, *in the absence of a statute requiring it*, subsequent encumbrancers

are not necessary parties in a suit to enforce a mechanic's lien."

This was a suit in equity by the appellants, who were general contractors, to subject certain property, known as the Deep Water Pier, to a mechanic's lien. The suit was admittedly brought within six months from the time when the amount covered by the lien became payable—the time prescribed by the Code of Virginia. The second lien on the property was a deed of trust. After the expiration of the six months, plaintiffs in the original bill filed an amended and supplemental bill making the trustee and holders of the bonds parties. The trial court then dismissed both the original and supplemental bills. The Supreme Court, in reversing the lower court, says (p. 280) :

"The holding amounts to this, that, though a suit to enforce a mechanic's lien is brought within due time against the debtor upon whose property the lien rests, the failure to implead subsequent lienors within six months defeats the lien so far as such incumbrancers are concerned. This is plainly an erroneous construction of the mechanic's lien act. There is no statutory requirement that subsequent incumbrancers shall be made parties and, though they are *proper parties*, they are not *necessary parties* to such suit."

And again (p. 281) :

"Such suit is in no sense a suit against other lien creditors of the common debtor, even when

combined as parties defendant. No relief is sought against them and, where such course is adopted, they are thus impleaded as matter of convenience to enable the court to audit liens and transfer the charge from the property to the purchase money. In this way, the court offers an unencumbered title to intending purchasers and, in the interest of all concerned, the land is sold to best advantage."

Further, on page 281:

"It is true that in some cases one creditor may set up the statute of limitations to defeat the demand of other creditors against the common debtor, but, to sustain such plea, it is essential to show that the co-creditor's debt is barred as between himself and his debtor."

This brings us to a consideration of the rules governing collateral attacks upon decrees by third persons as they have been developed in the cases dealing with mechanic's liens and also to the consideration of the second remedy mentioned on page 25, *supra*.

## 2. MORTGAGEE'S RIGHT TO CONTEST VALIDITY OF DECREE IN LIEN SUIT.

The general rule as to third persons collaterally impeaching a judgment is made up of two parts, (1) The party attacking the judgment "must show that he has rights, claims or interests which would be prejudiced or injuriously affected by the enforcement of the judgment, and which accrued prior to its rendition."

(2) "Thus situated, he may attack the judgment on the ground of want of jurisdiction or for fraud or collusion but he cannot object to it on account of mere errors or irregularities."

23 Cyc. 1068.

See also 17 Am. & Eng. Enc. of Law 849, Freeman on Judgments, 3rd edition, Sec. 335, et seq.

To bring his case within this rule, he must plead three things: (1) That he was not a party to the suit the judgment in which he seeks to attack, (2) That he has some "rights, claims or interests," specifying them, which have been injuriously affected by the judgment, (3) That the judgment was secured by fraud, collusion or something equivalent thereto, for the purpose of injuring his interests.

Howard v. Robinson, *supra* 22;

Hassall v. Wilcox, 130 U. S. 493; 32 L. Ed. 1001; 9 Sup. Ct. R. 590;

Cornell v. Conine-Eaton Lumber Co., 9 Colo. App. 225; 47 Pac. 912;

Schaffer v. Lohman, 34 Mo. 69.

The case of Hassall v. Wilcox, *supra*, deals with this question of collateral attack and was cited by appellees in the trial court because they found, in the opinion, the statement that the trustees and the bondholders were not bound by a judgment rendered in a proceeding to which they were not parties.

The case grew out of the construction of a railroad in Texas, the plaintiffs were the trustee and bond-



holders under a deed of trust given to secure money to build the road and Wilcox was a mechanic's lien claimant. Wilcox had instituted suit under the laws of Texas to enforce his lien, the hearing was before a master and some of the plaintiffs objected to the findings of the master upon several grounds, among which were the following:

"3. That, for the purpose of defeating the lien of the mortgage, Wilcox falsely represented to the District Court that the note was for service and for amounts advanced on claims for labor performed in the construction and maintenance of the railroad. \* \* \* That he performed no service and owned no claims which entitled him to such lien; that any lien was barred by the limitation of one year."

It also appeared that Wright had brought suit in the State Court of Texas to set aside and annul the Wilcox lien judgment on account of the acts of collusion and fraud in procuring the same. The pleadings thus bring the case squarely within the rule above set forth in regard to collateral attack and the plaintiff's right to conduct such an attack is placed by Mr. Justice Blatchford on the ground that, not having been a party to the suit to enforce the lien, he is not bound by the judgment in that suit. Being thus entitled to conduct a collateral attack upon the judgment, the success or failure of such attack must depend upon the evidence offered to prove that the judgment was procured by collusion and fraud "for the purpose of defeating the lien of the mort-

gage.” The court, finding the proof in this regard too indefinite to satisfactorily determine the matter, ordered a re-examination of the claim of Wilcox “before a master on the same and further proofs if desired.” The point was raised in the case that the lien was barred by the limitation of one year under Sec. 4 of the Mechanic’s Lien Act of Texas, which reads as follows:

“The lien created by this act shall cease to be operative in twelve months after the creation of the lien if no step be sooner taken to enforce it.”

130 U. S. 495.

The case under discussion was commenced after the twelve months mentioned in the statute had expired, but the court entirely ignored this feature, as appellees in the case at bar are endeavoring to present it, thus indicating the objection, in the mind of the court, to be of no importance.

In Colorado, the same theory of mortgages is in force as in California and Idaho (Pomeroy’s Equity Jurisprudence, 3 Ed. Vol. 3, Sec. 1188, and note beginning on page 2354) and the lien statute of Colorado is practically identical with that of Idaho, as shown by *San Juan Hardware Company v. Carruthers*, 7 Col. App. 413, 43 Pac. 1053.

In the case of *Cornell v. Conine-Eaton Lumber Co.*, *supra*, the appellant endeavored collaterally to impeach the decree in a prior suit to enforce a mechanic’s lien to which he was not a party. The court

refers to the fact that appellant had a right under the Colorado statute to intervene in that proceeding had he seen fit to do so. The opinion then continues (47 Pac. 915) :

“There is no assertion of any legal defense of appellant against the claims of the lien claimants and, having failed to avail himself of his statutory rights, he should not be heard to say that the lien judgments were not valid against the property by reason of appellees’ failing to do for him what he declined to do for himself.  
\* \* \* We do not undertake to determine what, if any, right of redemption appellant had or has, nor do we intend to preclude him from asserting any right he may have.”

This decision was affirmed in *Fleming v. Prudential Ins. Co., of Am.*, 19 Col. App. 126, 73 Pac. 752, in which the court holds that appellee, not having been a party to the lien proceedings, was not bound or affected by them and was, therefore, at liberty to assail the validity of the lien therein established. In referring to the *Cornell* case, it is said that the appellant in that case, without averring that he could have defeated the lien as a party to the proceeding in which it was declared, was denied on such showing the right to assail the lien, but that this was not a determination of any right of redemption which appellant might have nor did it preclude him from asserting any rights he might have. See also *Gamble v. Voll*, *supra*.

In *Schaffer v. Lohman*, *supra*, the court says:

“It is true, those not made parties are not bound by the judgment, that is to say, they may impeach its regularity as was done in the case of *Hauser v. Hoffman*, mentioned above, but, until so impeached, it is a valid judgment. \* \* \*.”

The meaning of these cases is that a judgment once secured in a court of law is valid and binding until reversed or impeached. There are certain classes of persons who may impeach the judgment in a collateral proceeding but, to do this, the mere allegation that they were not parties to the suit is not sufficient. There are additional facts essential to a good cause of action brought for such a purpose and those facts must be pleaded and proved to entitle the party to the relief he seeks. In *Hassall v. Wilcox*, these facts were all pleaded and the court ordered a further examination before a master for the purpose of making the proof more definite. In the three cases discussed in this brief immediately following *Hassall v. Wilcox*, the pleadings themselves were insufficient to collaterally impeach a valid judgment and, in refusing the relief asked, the courts reserve to the complainant such rights of redemption as he may have.

### *Cases Contra Distinguished.*

In Illinois, a mortgage vests the legal title in the mortgagee (*Pomeroy's Equity Jurisprudence*, Vol. 3, 3rd Ed., Sec. 1187, and note beginning page 2346) thus vesting in the mortgagor the equity of redemption.



The logic of the situation under this theory of mortgages is that the mortgagee must be joined in the suit to enforce the lien because in him is vested the *legal* title, (*Columbia Bldg. & Loan Association v. Taylor*, 24 Ill., App. 429, *Lundsford v. Wren*, 64 W. Va., 458, 63 S. E. 308, *Seibs v. Englehardt*, 78 Ala. 508) and, if he be so joined, the lien has become fixed as to time and extent and a valid encumbrance on the legal title. Then, according to the ancient usages and rules of equity, the equity of redemption of subsequent encumbrancers may be foreclosed at any time prior to the running of the statute of limitations. Sec. 28, of the Mechanic's Lien Act of Illinois, Revised Statutes of 1874, page 668, reads as follows:

“No creditor shall be allowed to enforce the lien created under the foregoing provisions as against or to the prejudice of any other creditor or any encumbrance unless suit be instituted to enforce such lien within six months after the last payment for labor or materials shall have become due and payable.”

Now, the only way that a lien may be enforced as against or to the prejudice of any other creditor or encumbrancer is by suit to foreclose the equity of redemption, and this statute of Illinois is a statute of limitations as to such a suit.

The Illinois cases, however, seem to lose sight of these fundamental principles and are it seems to us, beclouded with technical and unreasonable arguments.

In *Dunphy v. Riddle*, 86 Ill. 22, the court ruled that by force of the statute above quoted, at the end of six months, the lien had expired as to any other creditor or encumbrancer against whom proceedings had not been commenced, but one of the parties to that suit held as a purchaser and the lien was held to be still effective as against him. This was based on the ground that the language of the statute, "any other creditor or any encumbrance" did not embrace the purchaser. The court further stated that, although it could "perceive no good reason why a mortgagee should be thus protected, and a purchaser not be protected" still it did not feel warranted in going beyond the words of the statute. In thus failing to grasp the significance of the statute as one of limitations applied to suits to foreclose the equity of redemption, the court also lost sight of the long established rule that no man is bound by proceedings to which he was not a party. This was a suit in equity, yet the effect of the decision was that no equity of redemption existed in the hands of any of the subsequent encumbrancers. Certainly a most remarkable ruling in the face of long established principles and rules of equity and the decisions of learned chancellors. This same error is also found in the following cases:

*Crowl v. Nagle*, 86 Ill. 437.

*McGraw v. Bayard*, 96 Ill. 146.

*Bennit v. Willmington Star Mining Co., of Coal City*, 119 Ill. 9, 7 N. E. 498, *Watson v. Gardner*, 119 Ill. 312, 10 N. E.

192, Ballard v. Thompson, 40 Neb. 529,  
58 N. W. 1133.

In Williams v. Chapman, 17 Ill. 423, 65 Am. Dec., 669 cited by appellees in the trial court, the mortgage was dated Nov. 25, 1844, and the "date of commencement of defendant's lien could not have been before the 29th day of May, 1845." 65 Am. Dec. 671. The lien was thus subsequent to the mortgage and the case, therefore, not in point in this discussion.

The logical result of the Illinois decisions is shown by the remarkable situation produced in two late cases which were before the court in that state at the same time. Granquist and Porter, in separate actions, had each enforced liens against the same property, both cases were appealed, and both reversed, on the ground, in each case, that the lien claimant in the other case had not been made a party. Chief Justice Cartwright, dissenting in both cases, said:

"The anomolous situation is presented of adjudging a reversal on account of an error when the parties against whom the error was made do not desire the reversal and when no right of those parties can possibly be advanced by such adjudgment." (88 N. E. 471).

Granquist v. Western Tube Company, 240  
Ill. 132, 88 N. E. 468.

Porter v. Western Tube Company, 240 Ill.  
151, 88 N. E. 472.

In Indiana, the California theory of mortgages prevails, (Pomeroy's Equity Jurisprudence, Vol 3, 3rd Ed., Sec. 1188, note page 2358) and yet the same result is reached as in Illinois but on different theories. In *Union Nat. Savings and Loan Association v. Helberg*, 152 Ind. 139, 51 N. E. 916, the theory is that "a foreclosure (of a mechanic's lien) as against a junior mortgagee alone could hardly be said to satisfy the statutory requirement if objection were made by the property owner."

There are two faults with this reasoning. (1) A suit to "foreclose" could not, in any event, be maintained against the property owner, the holder of the *legal* title. The suit as against him is for the purpose of having his interest sold to satisfy the lien and, since he holds the legal title, he has no equity of redemption because he needs none. After sale, he has a statutory right to redeem but it is not subject to foreclosure. (2) The action as against the junior mortgagee is a *foreclosure of an equity of redemption* and such a suit against him alone cannot fasten any lien upon the legal title.

In *Deming-Colburn Lumber Co. v. Union Nat. Savings and Loan Association*, 151 Ind. 463, 51 N. E. 936, the theory is that since the mortgagee's rights were in no manner affected by the suit to enforce the lien to which he was not a party, his "mortgage stands just the same as it would have stood if the mechanic's lien had not been foreclosed within the time prescribed by the statute." This theory



seems, to say the least, illogical, because, before suit brought, the subsequent mortgagee has only an equity of redemption which means that he holds his claim in subordination to the prior lien and that the latter must be satisfied before he can subject the property to the payment of his claim. If the statement of the court were correct, the effect of it would be,—instead of not affecting the rights of a subsequent encumbrancer,—to actually *increase* his rights exactly as they would have been increased had the builder and owner paid the mechanic the amount of his claim and thereby discharged the prior lien. But the rights of one not a party to a suit are no more *increased* thereby than they are *diminished*, they are *unaffected*, and he is still bound, before enforcing his demand, to perform the condition upon which he acquired his right to a lien upon the property, namely the condition of redeeming from the prior lien and his equity of redemption is still preserved to enable him to perform that condition.

Diddy v. Risser, 55 Iowa 699, 8 N. W. 655.

The above remarks will also apply to the following cases:

Husted v. Nat. Home Building & Loan Association, 152 Ind. 699, 51 N. E. 1067.

Stoermer v. Peoples Savings Bank, 152 Ind. 104, 52 N. E. 606, Krotz v. A. R. Beck Lumber Co., 34 Ind. App. 577, 73 N. E. 273.

Wood v. Dill, 3 Kans. App. 484, 43 Pac. 822.

In Minnesota and Missouri, it is assumed, without argument or investigation, that a suit to enforce a prior mechanic's lien is, as to a subsequent encumbrancer, a suit against some interest which he is supposed to hold *in* the property rather than a suit to cut off his equity of redemption. It is also held that the subsequent mortgagee may collaterally impeach the lien judgment by merely pleading that he was not a party to the suit. The rule, as stated in 23 Cyc. 1068, and applied in *Hassall v. Wilcox*, *supra*, and the cases discussed in this brief on pages 40 to 44 inclusive, is entirely overlooked.

*Smith v. Hurd*, 50 Minn. 503, 52 N. W. 922, 36 Am. St. Reps. 661.

*Falkoner v. Cochran*, 68 Minn. 405, 71 N. W. 386. *Russell v. Grant*, 122 Mo. 161, 26 S. W. 958, 43 Am. St. Rep. 563.

*Davis v. Bartz*, 65 Wash. 395, 118 Pac. 334—This was the case most strongly relied upon and extensively quoted by appellee in the court below. While the opinion supports the appellee's contention it should be observed that a determination of the question which is here at issue was not necessary to a decision in that case, because the court does hold that the appellant was estopped from asserting a priority under his lien by reason of having himself first taken the mortgage and subsequently assigned the same. It was this mortgage which he was seeking to defeat and upon every consideration of equity he might have been denied relief upon this ground alone.

The decision is based on the authority of the Illinois, Indiana and Nebraska cases and it holds that "the mortgagee has something more than a mere right to redeem as against an antecedent lien. He has a right to contest its validity or assail its priority if the evidence warrants either defense." (118 Pac. 335). The rules, as laid down in regard to the collateral impeachment of judgments, are overlooked entirely and, even though the court holds that the validity of the lien may be contested or its priority assailed "*if the evidence warrants either defense*," it does not even require of the subsequent mortgagee that he should so plead as to make out a case for the collateral impeachment of a judgment by a third party, which alone would entitle him to introduce such evidence. The case of *Cornell v. Conine-Eaton Lumber Company*, supra, page 40, is the only authority cited in *Davis v. Bartz* contrary to the opinion of the court and its significance relative to the collateral impeachment of judgments was entirely overlooked, as appears from the remarks of the court as to that case. (118 Pac. 336).

We submit that the correct ruling would have been that the establishment of the lien in a suit in which the holder of the *legal* title was a party is sufficient to fasten the lien upon that title and, if the mortgagee would remove it without redeeming from the sale thereunder, he must do so by collateral attack, as was done in *Hassall v. Wilcox*, supra. Mere negative statements, such as this Washington case presents and such as are employed in the cases cited

therein, are not sufficient to impeach proceedings which are valid until reversed or set aside.

Howard v. Robinson, 59 Mass. 119.

Gamble v. Voll, 15 Cal. 508.

The answer to the trustee (appellee) to the cross complaint of the appellant did not plead its defense that the lien had expired by limitation under the statute. The appellant in the lower court contended that it is elementary that one relying upon a statute of limitations must plead it. The lower court, however, overruled appellant's contention (tr. p. 416). But the court's ruling is correct only upon the theory of strict construction of the lien statute adopted by him in the main opinion. If it should be held that the lower court erred upon the principal question herein discussed, then the appellant's Specification of Error No. III is also well taken.

### *Statutory Interpretation.*

In interpreting Sec. 5118, R. C. Idaho, the effect of that clause should not be overlooked which provides that, if a credit be given, the lien may thereby be continued in force for a period not exceeding two years from the time the work is completed or credit given. This has an important bearing on the issue presented here.

The contract giving the credit would, in all cases, be a contract between the lien claimant and the *owner* of the legal title to the premises. A junior encumbrancer on the property has nothing to do with the extension of the lien occasioned by the giving



of further credit. Since he cannot prevent such extension, how can it be said that he is a necessary party to an action to enforce the lien?

The language of the statute clearly indicates the intention of the legislature that the limitation of time fixed in the statute for foreclosure relates only to the action against the owner.

### CONCLUSION.

The record in the case at bar shows that appellant has established its lien upon the property here involved by suit against the holders of the legal title; that the property was sold under decree of the court; that appellant purchased at the sale; that the statutory right to redeem within one year has expired; that appellant has received a master's deed in pursuance of the sale; and that appellee was not a party to those proceedings.

It is submitted that under the law and facts of this case, the rights of the parties to this appeal are now as follows:

(1) Appellant has a valid title to the property secured upon proceedings to enforce a prior encumbrance.

(2) By reason of appellee's not being made a party to those proceedings, it is not bound by them and it might have, therefore, in this action, collaterally attacked the former decree, upon pleading and proving the necessary facts.

(3) Having failed to collaterally impeach appellant's decree, appellee must redeem from appel-

lant's prior lien as a condition precedent to the foreclosure of its trust deed or mortgage.

This completely protects the rights of appellee, as well as of appellant, for it does not require of appellee anything to which it did not agree, when it took a junior lien upon the property.

It is submitted that the decree of the lower court should be reversed and a decree entered requiring appellee to redeem from appellant's prior lien as a condition precedent to the foreclosure of its trust deed.

Respectfully submitted,

N. M. RUICK,  
Solicitor for Appellant.

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## APPENDIX.

### *Sections Of Mechanic's Lien Law Of Idaho Applicable To This Case.*

"Sec. 5110. Every person performing labor upon, or furnishing materials to be used in the construction, alteration or repair of, any mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure, or who performs labor in any mine or mining claim, has a lien upon the same for the work or labor done or materials furnished, whether done or furnished at the instance of the owner of the building or other improve-

ment or his agent; and every contractor, subcontractor, architect, builder or any person having charge of any mining claim, or of the construction, alteration or repair, either in whole or in part, of any building or other improvement, as aforesaid, shall be held to be the agent of the owner for the purpose of this chapter: Provided, that the lessee or lessees of any mining claim shall not be considered as the agent or agents of the owner under the provisions of this chapter."

"Sec. 5113. The land upon which any building, improvement or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if, at the commencement of the work or of the furnishing of the material for the same, the land belonged to the person who caused said building, improvement or structure to be constructed, altered or repaired, but if such person owns less than a fee simple estate in such land, then only his interest therein is subject to such lien."

"Sec. 5114. The liens provided for in this chapter are preferred to any lien, mortgage or other incumbrance, which may have attached subsequent to the time when the building, improvement or structure was commenced, work done, or materials were commenced to be furnished; also to any lien, mortgage, or other incum-

brance, of which the lien holder had no notice, and which was unrecorded at the time the building, improvement or structure was commenced, work done, or the materials were commenced to be furnished.”

“Sec. 5118. No lien provided for in this chapter binds any building, mining, claim, improvement or structure for a longer period than six months after the claim has been filed, unless proceedings be commenced in a proper court within that time to enforce such lien; or, if a credit be given, then six months after the expiration of such credit; but no lien shall continue in force under this chapter for a longer period than two years from the time the work is completed, or credit given, unless proceedings to enforce the same shall have been commenced.”

“Sec. 5124. Except as otherwise provided in this chapter, the provisions of this Code, relating to civil actions, new trials and appeals, are applicable to, and constitute the rules of practice in, the proceedings mentioned in this chapter; Provided, That the District Courts shall have jurisdiction of all actions brought under this chapter.”



IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.

---

CONTINENTAL AND COMMERCIAL TRUST AND  
SAVINGS BANK, AS TRUSTEE,

*Appellee,*

*vs.*

PACIFIC COAST PIPE COMPANY, A CORPORATION,  
and *Appellant,*

KINGS HILL IRRIGATION & POWER COMPANY, ET AL.,  
*Defendants.*

---

**BRIEF OF APPELLEE.**

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UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF IDAHO, SOUTHERN DIVISION.

---

LEVY MAYER,  
Chicago, Ill.,  
CHARLES L. POWELL,  
Chicago, Ill.,

RICHARDS & HAGA,  
Boise, Ida.,

*Solicitors for Appellee.*

**Filed**

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GUNTHERP-WARREN PRINTING COMPANY, CHICAGO.

FEB 5 - 1915

F. D. Monckton,  
Clerk.



IN THE  
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*Appellee,*

*vs.*

PACIFIC COAST PIPE COMPANY, A CORPORATION,  
*Appellant,*  
and

KINGS HILL IRRIGATION & POWER COMPANY, ET AL.,  
*Defendants.*

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STATEMENT.

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The statement of appellant which precedes the specifications of error in the brief of appellant, is in the main correct; but the exact question upon which the rights of the parties must turn is not as therein set forth.

Counsel says on page 3 of the statement:

“The principal contention was between appellant and appellee as to the priority of their respective liens, and this was treated by the trial court as the controlling question in the case.”

The statement is not accurate as to the question which was before the court. It is true the principal contention in the case was between the Pacific Coast Pipe Company,

the appellant here, and the Trustee Bank, but the contention of the Bank was not that its lien was prior to the lien of the appellant, but on the other hand, its contention was (1) that the lien of the appellant, if any it ever had, had expired by the very limitations of the statute under which it was claimed prior to the filing of the cross bill in this case for its enforcement; and (2) that if this were not true that appellee's lien by virtue of its mortgage was superior to the lien of appellant. The lien of the Pacific Coast Pipe Company, the appellant, was asserted under the Idaho statutes, certain sections of which are set out in the appendix to appellant's brief.

To a clear understanding, however, of the mechanic's lien laws of Idaho, it is necessary that one other section of the Idaho statute be before the court, and for convenience we set it out at this point:

“Sec. 5115. Every original contractor claiming the benefit of this chapter must, within ninety days, and every other person must, within sixty days, after the completion of any building, improvement or structure, or after the completion of the alteration or repair thereof, or in case he cease to labor thereon before the completion thereof, then after he so ceases to labor or after he has ceased to labor thereon for any cause, or after he has ceased to furnish materials therefor, or after the performance of any labor in a mine or mining claim, file for record with the county recorder for the county in which such



property or some part thereof is situated, a claim containing a statement of his demand, after deducting all just credits and offsets, with the name of the owner, or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the materials, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of the claimant, his agent or attorney, to the effect that the affiant believes the same to be just."

It will be necessary to bear in mind certain specific dates which affect the interests of the parties:

The mortgage was executed November 2, 1908, and recorded December 9, 1908, and a certain amendment of the mortgage was executed March 1, 1909, and recorded March 19, 1909. The appellant, the Pacific Coast Pipe Company commenced furnishing material on the 13th day of July, 1909,—long after the mortgage and amendment were executed and recorded, and continued to furnish material up to the 2nd day of July, 1910. The Pacific Coast Pipe Company's claim of lien was filed August, 4, 1910, in Elmore County and August 5, 1910, in Owyhee County,—within sixty days after the last material was furnished in accordance with the provisions of the Idaho statute above quoted.

On October 31, 1910, the Pacific Coast Pipe Company commenced an action for the enforcement of its lien in

one of the courts of Idaho, making as sole defendant thereto the King's Hill Irrigation and Power Company, and such proceedings were had in that case that the lien was foreclosed and the property of the irrigation company on which the lien was asserted was acquired by the Pacific Coast Pipe Company through a master's deed prior to the trial of this case in the court below. It is to be noted at this point that appellee's trust deed creating a lien upon the same property was of record at time this suit was brought in all the counties where the property was situated (including the county where the suit was brought to foreclose the lien) and yet the trust company (appellee) was not made a defendant.

No effort to foreclose the lien of the Pacific Coast Pipe Company, as against the appellee, Continental and Commercial Trust and Savings Bank, whose mortgage or trust deed had been of record since 1909, was made until the cross bill was filed in this suit on the 25th day of March, 1913 (Rec., 64-95)—more than two years and six months after the lien was filed.

Turning now to Section 5118 of the Idaho statutes set out by appellant on page 56 of its brief, it will be seen that it is there provided:

“No lien provided for in this chapter *binds any building, mining claim, improvement or construction for a longer period than six months after the claim has been filed, unless proceedings be commenced in a proper court within that time to enforce such lien,*

or if a credit be given, then six months after the expiration of such credit; but no lien shall continue in force under this chapter for *a longer period than two years from the time that the work is completed or credit given, unless proceedings to enforce the same shall have been commenced.*”

It is thus seen that the statute provides that no mechanic's lien binds the property for more than six months after the claim was filed, unless proceedings be commenced; and again it provides that no lien shall continue in force for a longer period than two years from the time that the work was completed, unless proceedings to enforce have been commenced.

As above pointed out, the lien of the appellant was filed in Elmore County on August 4, 1910, and in Owyhee County on August 5, 1910, and the work was completed and last credit given on July 2, 1910, and appellant's cross bill to enforce the lien as against appellee was filed March 25, 1913.

It reasonably appears from the amended trust deed which, as above pointed out, was recorded March 19, 1909, that the system at that time was substantially complete. At any rate it was completed to the extent of delivering water to the lands embraced in the water contracts theretofore deposited with the Trustee as security for the bonds. The appellant did not commence to furnish any material until July 13, 1909, and the material which was by him furnished was used for two small lat-

erals, one known as the King's Hill syphon which carries water across Snake River in Elmore County for irrigating lands in the townsite of King's Hill and the vicinity thereof, which lands form no part of the irrigation project as originally contemplated. (Swensden Trans., 309.) The balance of the material was used in a pipe line known as the Tuana Gulch which is simply a short lateral extending from the main system and irrigates a small tract of land. (Swensden Trans., 306 *et seq.*)

There is absolutely no evidence that any part of the system was constructed over Government land or land to which both the legal and equitable title still stood in the United States Government. The evidence is rather to the contrary. The King's Hill syphon was constructed over private land (Trans., 309), presumably by an agreement with the then owner as to the right of way. The Tuana Gulch was probably constructed over Carey Act land, and there is not the slightest evidence to show that the title to the right of way was acquired because the pipe line was constructed over it.

There can be no foundation for the contention made by appellant that the title to the irrigation system was dependent upon the construction of the two small pipe lines (Trans., 307), and that such title became vested in the King's Hill Irrigation Company because of the construction of the pipe line. We call on counsel to show where in the record there is evidence that the title to the



rights of way was in any wise dependent upon the construction of the pipe lines for which appellants furnished material.

It becomes apparent then from this statement that before appellant can succeed he must successfully maintain the proposition that the mechanic's lien is superior to the lien of the trust deed—a proposition dependent solely upon his claim that the right of way came to the company by virtue of his work; and if he successfully maintains that proposition, then he must maintain the additional proposition that his lien had not expired as to the mortgagee at the time he filed his cross-bill to foreclose.

## BRIEF.

## I.

ONE SEEKING THE ENFORCEMENT OF A MECHANIC'S LIEN  
MUST BRING HIS PROCEEDINGS FOR ENFORCEMENT THEREOF  
WITHIN THE TIME LIMITED IN THE STATUTE CREATING THE  
LIEN AS AGAINST ALL PARTIES INTERESTED IN THE PROP-  
ERTY SOUGHT TO BE HELD.

*Davis v. Bartz* (Wash. 1911), 118 Pac., 334.

*Smith v. Hurd*, 50 Minn., 503; 52 N. W., 922.

*Falconer v. Cochran* (Minn.), 71 N. W., 386.

*Boylan v. Cameron*, 126 Ill. App., 432.

Rockel on Mechanic's Liens, Sec. 213.

*Dunphy v. Riddle*, 86 Ill., 22.

*Smith v. Barrett*, 41 Mo. App., 460.

*Crowl v. Nagle*, 86 Ill., 437.

*Denver & R. G. Ry. v. Wagner*, 167 Fed., 75.

*The Harrisburg*, 119 U. S., 199.

*Stern v. LaCompagnie*, 110 Fed., 996.

*Peters v. Hanger*, 134 Fed. (4 C. C. A.), 586.

*Arnson v. Murphy*, 115 U. S., 579.

*Deming Colburn Co. v. Union National Savings  
Assn. (Ind.)*, 51 N. E., 936.

*Union National Bank v. Helberg (Ind.)*, 51 N. E.,  
916.

*Stoermer v. Peoples Bank (Ind.)*, 52 N. E., 606.

*Green v. Sanford (Neb.)*, 51 N. W., 967.

*Ballard v. Thompson* (Neb.), 58 N. W., 1133.

*Badger Lumber Co. v. Staley* (Mo.), 125 S. W.,

779. **U. S. vs. Kessler, 218 Fed. 67.**  
**U. S. vs. Texas &c. Co. 233 U. S. 157.**

## II.

WHILE MECHANIC'S LIEN STATUTES ARE TO BE LIBERALLY CON-  
 STRUED FOR THE ACCOMPLISHMENT OF THEIR PURPOSE, ONE  
 SEEKING THE BENEFIT THEREOF MUST BRING HIMSELF  
 WITHIN THE FOUR CORNERS OF THE STATUTE.

*Russell v. Hayner* (C. C. A. 9th Circuit), 130 Fed.,  
 90.

*Reynolds v. Manhattan Trust Co.* (C. C. A. 8th  
 Circuit), 83 Fed., 593.

## III.

NOR IS IT NECESSARY FOR A DEFENDANT WHO RELIES UPON  
 THE PROPOSITION THAT SUIT WAS NOT INSTITUTED WITHIN  
 THE TIME LIMITED BY THE STATUTE TO PLEAD SUCH FACT  
 IN DEFENSE OF THE ACTION, WHERE AS IN THIS CASE THE  
 TIME LIMITED IS A PART OF THE RIGHT.

*Davis v. Bartz, supra.*

*Denver & Rio Grande Ry. v. Wagner, supra.*

*The Harrisburg, supra.*

*Stern v. LaCompagnie, supra.*

*Arnson v. Murphy, supra.*

## ARGUMENT.

Appellant's statement in the argument on page 16, that

“It is conceded in the opinion of the trial court that the appellant's lien as a material man has priority over the appellee's mortgage”

is gratuitous. Reference to the opinion appearing on page 416 of the transcript will convince the court of the accuracy of our statement as to the gratuitous character of this statement. The court never had occasion to pass upon the question of the priority of the two liens, as it was found that the appellant's lien had expired by virtue of the statute.

It is true, as is apparent by a reference to page 418 of the transcript, that, in the case of *Utah Implement Vehicle Co. v. Bowman*, from the opinion in which case an excerpt is added by the court to the opinion in this case, that was the precise question in that case; but as above pointed out, the court having found in this case that the appellant had no lien, the concession was never made by the court or any one else that the lien of appellant was superior to the lien of the trust deed.

Two contentions are made by appellant for reversal:

First: The mechanic's lien of the appellant had not expired by operation of law at the time the cross bill was filed.



Second: The mechanic's lien of the appellant is superior to the lien of the trust deed.

## I.

THE MECHANIC'S LIEN OF THE APPELLANT HAD EXPIRED BY OPERATION OF LAW, AT THE TIME THE CROSS BILL WAS FILED.

The manifest errors into which counsel has fallen, in the argument, arises from a failure to appreciate the character of the rights created by mechanic's lien statutes. Counsel confuses the statutory mechanic's lien with equitable liens created by mortgage or otherwise. He loses sight of the fact that the lien rests entirely upon the statute of the state, and while it has some equitable characteristics, it is purely the creature of the statute and can only be availed of in the manner and upon the conditions specified in giving the lien.

*Witherow Lumber Co. v. Glasgow Investment Co.* (C. C. A. 4th Circuit), 101 Fed., 863, 42 C. C. A., 61.

1 Pomeroy's Equity, 167.

Counsel likewise loses sight of the fact that the six months' limitation in regard to the filing of the claim for lien, and the two-year limitation for bringing a suit, contained in the Idaho statute, are not statutes of limitation, but are a part of the right. This distinction is well pointed out in *Bear Lake Irrigation Company v. Garland*,

164 U. S., 1, 14, cited by counsel, where it is said with reference to a mechanic's lien statute:

“It may be assumed that where a statute creates a right not known to the common law and provides a remedy for the enforcement of such right and limits the time within which the remedy must be pursued, the remedy in such case forms a part of the right and must be pursued within the time prescribed or else the right and remedy are lost.”

As is well said by a learned text writer on mechanic's liens:

“A lien claimant must bring himself within the provisions of the statute creating his lien rights and then he must have complied with the conditions bringing the right to a perfected lien before he can enforce any lien claim.”

Rockel on Mechanic's Liens, Section 200.

Counsel's contention on page 20 of the brief, that there are two lines of decisions which are irreconcilable, is without support so far as we are able to read the cases, when the true character of a statutory mechanic's lien is kept carefully in mind. Counsel is entirely in error when he says that appellee's theory was that a subsequent incumbrancer is an indispensable party to a mechanic's lien foreclosure suit. No such contention was made in the court below, nor is any such contention made here. Our contention there was, and our contention here is, that if one holding a lien on the property on

which the material man or laborer asserts a lien, *is not made a party to the proceedings required by the statute to enforce said lien within the time limited by the statute, that as to such lienor, the mechanic's lien expires by its own limitation upon the expiration of the time limited for doing that which is necessary to be done under the statute to give effect to the lien.*

Counsel is led astray in citing the Iowa cases as indicating one line of authority with reference to mechanic's liens, by reason of his failure to distinguish the fact which is perfectly patent under an examination of the Iowa statutes, that the statute there with reference to the time within which a mechanic's lien must be enforced, is a part of the general statute of limitations and there is no limitation in the statute granting the right to a mechanic's lien and making the remedy a part of the right.

Code of Iowa 1897, Chapter 8, Sections 3088-3098.

Code of Iowa, Section 3447.

The whole discussion of counsel on the theory of the rights of junior incumbrancers in mortgage foreclosures, falls to the ground when it becomes apparent that the statute here is not a statute of limitations. That counsel does treat the limitation here not as a part of the remedy but as a statute of limitations, becomes apparent in his discussion on pages 26-30, of the case of *Frates v. Sears*, 144 Cal., 246, 77 Pac., 905, and his pronouncement of the Idaho rule as is held in *Kelly v. Leachman*, 3 Ida., 629.

As he well says, the Idaho rule is that the statute of limitations does not extinguish the debt but merely operates to bar the remedy; but such rule has no application in the instant case for the reason that the limitation of the time when the action must be brought is part of the right. It is not a statute of limitations in any respect. If the action is not brought within the time in the words of the statute, "the lien no longer binds the property." It is gone.

The case of *DeLaVergne Refrigerating Co. v. Montgomery Brewing Co.*, 6 C. C. A., 272, 57 Fed., 111, went upon the permissive character of the statute there under consideration, to the effect that other interested parties may be made parties. The court was of the opinion that incumbrancers were governed solely by the section of the statute which permitted them to be made parties. The case had no predecessor and has never been followed, or even cited except by Judge Dietrich in the Bowman case though decided in 1893.

If the DeLaVergne case is authority for the position of counsel, it stands alone and is opposed to the great weight of authority, except as it has some support from the case of *Monk v. Exposition Company*, 68 S. E., 280, referred to in the opinion of the court below and discussed somewhat by counsel in the brief. It is contrary to reason and a long line of well considered authorities.

Thus under a mechanics' lien statute in Washington, substantially like the Idaho statute, it is held that one



suing to enforce a lien must allege and prove that the action was begun in time as against all the parties sought to be bound. In the case in question, a mortgage had been taken on the property during the progress of the work, for which the lien was claimed. The material man foreclosed his lien within the time limited by the statute, but did not make the mortgagee a party, and such mortgagee did not appear therein. About two years after the filing by the contractor of his lien, the assignee of the mortgage brought suit to foreclose the mortgage, and in this suit it was held that the mortgagee was a proper party in the lien foreclosure suit, and, therefore, his interest would not be affected thereby, and the rights of the material man were subject to the mortgage lien, *because such lien had expired as against the mortgagee before suit to enforce it was brought.*

*Davis v. Bartz* (Supreme Court of Washington, Oct. 24, 1911), 118 Pac., 334.

The reasoning in the last above cited case is so conclusive, and so appropriate to the situation here, the statutes being in effect identical, that we quote at length from the opinion, as follows:

“1. No action was commenced to foreclose the lien as against the respondent, Davis, within the life of the lien. The statute (Rem. & Bal. Code, Sec. 1138), provides that : ‘No lien created by this chapter binds the property subject to the lien for a longer period than eight calendar months after the claim has been filed unless an action be commenced in the

proper court within that time to enforce such lien; or, if credit be given, then eight calendar months after the expiration of such credit. \* \* \* Since the lien expires by force of the statute, unless action be commenced within the statutory time, it is necessary to the pleading and proof of a valid lien that the complaint allege and evidence show that the work was done or materials furnished within that time, or the action cannot be maintained. This necessarily results from the wording of the statute, as construed by this court in a number of decisions. *Rees v. Wilson*, 50 Wash., 339, 97 Pac., 245; *Northwest Bridge Co. v. Tacoma Shipbuilding Co.*, 36 Wash., 333, 78 Pac., 996; *Peterson v. Dillon*, 27 Wash., 78, 67 Pac., 397; *Powell v. Nolan*, 27 Wash., 318, 67 Pac., 712, 68 Pac., 389.

2. It is the manifest purpose of this statute to require the claimant to bring suit to establish his lien while the evidence upon which it rests is sufficiently recent to enable any party interested to successfully contest it, if the facts do not warrant the lien. The claimant must accord this opportunity within the time limited or lose his lien. It is equally manifest that this right of contest is as valuable, and should be as available, to a mortgagee as to the owner. A mortgagee has something more than a mere right to redeem as against an antecedent lien. He has a right to contest its validity or assail its priority, if the evidence warrants either defense. He is entitled to

his day in court upon these matters within the period fixed by the statute. In this respect, there is no valid distinction between necessary parties and proper parties. *Union Nat. Savings & Loan Ass'n v. Helberg*, 152 Ind., 139, 51 N. E., 916.

It follows of necessity that any one interested, whether as owner, mortgagee, lien claimant, or otherwise, anyone who may defend against the lien, or show by competent evidence that it is not a lien as against his interest, has the right to invoke the statute; if the action be not commenced as *against him* within the statutory period. So read the better-considered authorities in construing similar statutory provisions. 'As to each defendant in an action, the action is commenced and is pending only from the time of service of the summons on him, or of his appearance without service; and, where each may object that the action was not commenced within the time limited by statute, its commencement as to his objection is to be determined by the time of service on him, and not by the time of service on some other defendant. This is a rule applicable to every action, and applies as well to actions to enforce mechanics' liens as to any others. And any one who may defend against such a lien, who may show that for any reason it is not a lien as against his interest, may object that the lien had expired, or the remedy upon it had been lost by lapse of time, before the action was commenced against him.' *Smith v. Hurd*, 50

Minn., 503, 52 N. W., 922, 36 Am. St. Rep., 661. 'But counsel for appellee contend that, however true it may be that the lien of the lumber company was prior to that of the mortgagee at the time of the foreclosure of the former, yet such priority could last only during the life of the mechanics' lien. This, we think, must be admitted. The statute (section 7259, Rev. St., 1894; Section 5297, Rev. St., 1881; section 5297, Horner's Rev. St., 1897), gives one year from the time when notice is filed in the recorder's office, or, if a credit is given, one year from the expiration of such credit, during which time suit may be brought for the enforcement of a mechanics' lien; and it is there expressly provided that, "if said lien shall not be enforced within the time prescribed by this section, the same shall be null and void." If the lien in this case had not been foreclosed within the year given by the statute, it is clear that it would have been void as to all persons concerned, including the mortgagee. But, while the lien was duly foreclosed as against the owner of the property, yet, as we have seen, the appellee, as mortgagee, not having been made a party to the action, its rights were in no manner affected thereby; that is, appellee's mortgage stands just the same as it would have stood if the mechanics' lien had not been foreclosed within the time prescribed by the statute. In other words, the year given by statute having expired without a foreclosure of the lien as against the mortgage, the



lien itself, and the judgment based thereon must be, as to such mortgage, absolutely void. Equity cannot, as in the case of mortgages, maintain the senior lien on foot after the expiration of the year, when the statute declares it shall be void. By its foreclosure, the lienholder, not having made the mortgagee a party, simply stepped into the shoes of the owner of the property; and, as such owner could not question the right of the mortgagee to foreclose against the property, neither can the lienholder now do so; the year given him by statute to foreclose his lien having expired. It would, of course, be different if the time for the foreclosure of a mechanic's lien were not limited by the statute.' *Deming-Colborn Lumber Co. v. Union Nat. Savings & Loan Ass'n*, 151 Ind., 463, 469, 51 N. E., 936, 938, 939; *Hokanson v. Gunderson*, 54 Minn., 499, 56 N. W., 172, 40 A. St. Rep., 364; *McGraw v. Bayard*, 96 Ill., 146; *Dunphy v. Riddle*, 86 Ill., 22; *Husted v. National Home Building & Loan Ass'n*, 152 Ind., 698, 51 N. E., 1067; *Union Nat. Savings & Loan Ass'n v. Helberg*, 152 Ind., 104, 139, 51 N. E., 916; *Stoermer v. People's Savings Bank of Evansville, Indiana*, 152 Ind., 104; 52 N. E., 606; *Krontz v. Beck Lumber Co.*, 34 Ind. App., 677, 73 N. E., 273; *Ward v. Yarnelle*, 173 Ind., 535, 91 N. E., 7; *Green v. Sanford*, 34 Neb., 363, 51 N. W., 967; *Ballard v. Thompson*, 40 Neb., 529, 58 N. W., 1133; *Pickens v. Polk*, 42 Neb., 267, 60 N. W., 566; *Goodwin v. Cunningham*, 54 Neb., 11, 74 N. W., 315."

*Davis v. Bartz, supra.*

In one of the Minnesota cases cited in the above quotation, it is held that by beginning an action against the owner, within the time limited by the statute (it was two years in Minnesota) such action was not thereby begun within proper time as to a lienholder, and it is there said:

“And anyone who may defend against such a lien, who may show that for any reason it is not a lien as against his interest, may object that the lien had expired, or the remedy upon it had been lost by lapse of time, before the action was commenced against him. \* \* \* It amounts to just this: that when an action is commenced as to any defendant there must be an existing cause of action against him, and the right to a remedy upon it.”

*Smith v. Hurd*, 50 Minn., 503, 52 N. W., 922.

In another case arising in Minnesota, a material man brought an action, in 1894, and made the mortgagor, who was the owner of the property, a party defendant, and named Falconer, the mortgagee, as a defendant, but the summons was never served on him, and he never appeared in the action. The question arose subsequently, when Falconer was in court properly, as to whether or not the mechanic's lien continued as to him, and the court said:

“Black (the material man) has never foreclosed or enforced his lien as against the plaintiff (the mortgagee). The commencement of an action for that purpose against the owner of the equity of re-

demption, Walsh, did not preserve the lien as against the plaintiff. (Citing *Smith v. Hurd*, *supra*.) The time for commencing such an action had expired long before the commencement of the present action. Hence all that is now left to Black is to stand in the shoes of Walsh, the mortgagor, as owner of the equity of redemption from plaintiff's mortgage."

*Falconer v. Cochran*, 71 N. W., 386.

In a case arising in Illinois, the rule that the proceeding by which a mechanics' lien is sought to be enforced must be instituted within the time fixed by statute or such proceeding will fail, was declared applicable even where the proceeding is by cross bill, interposed in an action brought by another party, and the court there, quoting from a prior case in the Supreme Court of Illinois, said:

"The remedy by a mechanics' lien is cumulative to the ordinary remedy given by the common law, and is a privilege enjoyed by one class of the community above all other classes; and therefore, a party seeking to enforce it must bring himself strictly within the terms of the statute. Nothing can be inferred in his favor, but the law must be strictly construed. (Citing *Freeman v. Rinaker*, 185 Ill., 179.)"

*Boylan v. Cameron*, 126 Ill. App., 432.

The statute under construction in the last above cited case provided that no petition shall be filed or suit commenced to enforce the lien, unless the same is commenced

within four months after the time the final payment is shown to be due the contractor. The court, in disposing of the case, said:

“This section called upon Boylan to begin his suit within four months from July 17, 1900, if he wished to have the benefit of the act. This privilege expired November 17, 1900. His cross-bill in form of an answer, was not filed until December 20, 1900. Clearly this was too late.”

*Boylan v. Cameron, supra.*

In Illinois the statute did not say, in terms, against whom the suit shall be commenced within six months, its language being “unless suit be instituted to enforce such lien within six months.”

The following is laid down as the general rule by a high class text writer on mechanics' liens:

“As a general rule, the mechanics' lien statutes fix the time within which an action to foreclose shall be brought, and, as a matter of course, if the action is not brought within that time, it will fail. When the case clearly is not within the statutory limit, consideration of equity will not prevail over statute and extend the time, nor may statutory provisions relating to the time of foreclosure be waived, unless the conduct of the parties is such as will permit of no other conclusion.”

*Rockel on Mechanic's Liens, Sec. 213.*

In another Illinois case Gallaher held a mortgage of



record. As to the owner, a mortgagee company and another, the suit was begun within six months, as provided by the statute, but Gallaher was not made a party defendant to the suit until four days after the expiration of the six months, and it was there contended that it was only needful to commence the suit to enforce the lien against the owner of the property within six months, and that at any time afterwards and after the expiration of the six months, any creditor or incumbrancer could be made a party defendant, and the lien enforced against him, but the court said:

“We cannot adopt this as the true construction of this 28th section of the statute, but think it to be otherwise; that the person against *whom* the suit must be instituted within the time limited is the one against whom the right of lien may be asserted; that the suit must be instituted against the *creditor* or *incumbrancer* within the six months; that such interpretation accords with the rule of strict construction which has ever been applied to this and like statutes; and where suit is commenced to enforce the lien against the owner, and afterward, upon amendment of the petition, a creditor or incumbrancer is made a party defendant to the suit, that the suit can not be considered as having been commenced against such creditor or incumbrancer until he was so made a party defendant.”

*Dunphy v. Riddle*, 86 Ill., 22.

In Missouri, the provisions of a special charter provided that the lien of a special tax bill shall continue for two years but not longer. Suit was brought to collect the same within two years from the issue thereof. The court there held that such statute is not a statute of repose to bar actions, but is rather a limit to the existence of the lien; and so, where an action was commenced within two years against the owner at the time of the issue of the tax bill, and, after the expiration of two years from the date of the tax bill, the petition was amended and the owner at the time of the institution of the suit was then made a party and brought in by summons, it was held that the lien was dead and could not be enforced, and the Illinois cases of *Dunphy v. Riddle*, 86 Ill., 22 and *Crowl v. Nagle*, *infra*, were cited with approval.

*Smith v. Barrett*, 41 Mo. Appeals, 460-468.

In another case coming before the Supreme Court of the State of Illinois, a suit was brought against the contracting party to enforce the mechanics' lien within the six months provided by the statute, but incumbrancers were not made parties within the six months, but were brought in later, and it was held that no lien could be enforced as against such new parties as to affect their rights.

*Crowl v. Nagle*, 86 Ill., 437.

It is believed that the Circuit Court of Appeals of the Eighth Circuit, had an analogous case before them in

*Denver & R. G. Ry. v. Wagner*, 167 Fed., 75. The action was brought in Colorado for the death of a passenger, which occurred in New Mexico. The New Mexico statute provided that there should be no such action maintained unless the person claiming damages, within ninety days after the injury shall have been inflicted, shall serve upon the corporation against whom the same is claimed, and thirty days before commencing suit, an affidavit, made before some officer within the territory authorized to administer oaths, in which the affiant shall state his name and address, the name of the person injured, etc., the way or manner in which the injury was caused, and the names and address of witnesses, etc., and unless the persons so claiming the damages shall commence an action to recover the same within one year after such injuries occur.

The court, in passing upon the question, quoted, with approval, from the case of *Swisher v. Railway Company*, 76 Kan., 97, 90 Pac., 812, to the effect that the giving of the notice was an essential part of the action, and until such notice was given no right of action existed. The court, in disposing of the case, said:

“This rule is recognized in *The Harrisburg*, 119 U. S., 199, 7 Sup. Ct., 140, 30 L. Ed., 358, in which it is held that, in an action based on a statute conditioning the right given, it is incumbent on the plaintiff to plead the performance of such condition, and the defendant is not required to plead the limitation in the statute to entitle him to insist upon the objec-

tion that the action was not brought within time, etc. Chief Justice Waite, among other things, said: 'The liability and the remedy are created by the same statute, and the limitations of the remedy are, therefore, to be treated as limitations of the right.'

In *Stern v. La Campagnie Generale Transatlantique* (D. C.), 110 Fed., 996, it was held that, in an action based on a statute making the giving of such notice and the time of bringing such suit express conditions of the right, it is incumbent upon the plaintiff to plead the performance of such conditions, and the defendant is not required to plead them to entitle him to insist on the objection at the trial.

So Judge Hook, in *Lange v. Union Pacific R. Co.*, 126 Fed., 338, 62 C. C. A., 48, 52, said that:

'Failure to give the notice is fatal to the case. The enforcement of the liability of the company was, by the act which created it, conditioned upon the giving of the notice. Without compliance with the condition there can be no enforcement of the liability.' "

*Denver & R. G. R. Co. v. Wagner*, 167 Fed. (8th C. C. A.), 75-80.

On rehearing, the court used this language:

"Counsel's whole argument in support of the motion for rehearing is based upon a false premise, to-wit: That the provision of the amendatory act



of 1903, requiring the giving of notice within 90 days after the injury, pertains merely to matter of procedure, and was in the nature of a statute of limitation on the right of action; and, therefore, when the statute was disapproved by Congress, it was like a repealing act affecting the remedy, passed while the case is on appeal and before final judgment thereon, either destroying the right of appeal or removing the bar. The Legislature of New Mexico gave to the defendant in error a right of action for damages resulting from death—a right which did not exist at common law. The Legislature which gave that right, by the act of 1903, declared that it could be exercised only on the condition that within 90 days after the given cause of action arose, the plaintiff should give the specified notice. This was a condition precedent to the right of action, the non-performance of which took away the cause of action. When this injury occurred, and this suit was brought the act of 1903 was a valid law, in force and effect. Under it, when this suit was brought, the plaintiff had no cause of action, as she had not performed the condition precedent. The subsequent disapproval by Congress was prospective only in its operation. It did not have the effect to revivify that which had been dead for two and one-half years.”

*Denver & R. G. R. Co. v. Wagner, supra.*

The case of the Harrisburg, referred to in the foregoing quotation from the Denver & Rio Grande case,

was this: The widow and child of Rickords brought action to recover damages for his death, caused by the negligence of the steamer in a collision on the 16th of May, 1877.

The Pennsylvania statutes, which governed, provided:

“Whenever death shall be occasioned by unlawful violence or negligence, and no suit for damages be brought by the party injured, during his or her life, the husband, widow, children, or parents of the deceased, and no other relative, may maintain an action for and recover damages for the death thus occasioned. The action shall be brought within one year after the death, and not thereafter.”

The action was not brought within one year, and the court said:

“The statute creates a new legal liability, with the right to a suit for its enforcement, provided the suit is brought within twelve months, and not otherwise.

The time within which the suit must be brought operates as a limitation of the liability itself as created, and not of the remedy alone. It is a condition attached to the right to suit at all. \* \* \* Time has been made of the essence of the right, and the right is lost if the time is disregarded. The liability and the remedy are created by the same statutes, and the limitations of the remedy are, therefore, to be treated as limitations of the right.”

*The Harrisburg*, 119 U. S., 199.

In the case of *Stern v. La Compagnie, supra*, referred to in the quotation from the Denver & Rio Grande case, *supra*, the action was in admiralty and the libel was filed March 22, 1900, to recover for an injury that occurred May 14, 1898. The action arose in New Jersey waters, and the statute of New Jersey was as follows:

“And in every such action, the jury may give such damages, etc., provided, that every such action shall be commenced within twelve calendar months after the death of such deceased person.”

It was there contended that the one-year proviso of the New Jersey statute was not part or condition of the right of action itself, but it was to be construed as an ordinary statute of limitations as affecting the remedy alone, and hence to be governed by the laws of the forum where the suit was brought, and the suit being brought in New York, it was contended that the ordinary statute of limitations governed. The court said:

“The proviso is attached as a condition of the right of action itself, and not merely as a designation of the ordinary period of limitation for such actions, operating merely as a part of the New Jersey statute of limitations on the remedy alone. If the latter were the proper construction, it might be subject to the extension provided by the general statute of limitations of New Jersey; but the one year proviso would in that case be operative *ex proprio vigore* in that state alone. On the contrary, however, the proviso must be held to be attached to

the right of action itself; and it must, therefore, run with the statute into every forum wherein any action under the statute may be instituted. -

This construction of the statutory proviso was laid down in *Boyd v. Clark* (C. C.), 8 Fed., 849, and it was established by the decision of the Supreme Court in *The Harrisburg*, 119 U. S., 199, where the statute under consideration was in substantially the same language as the New Jersey statute. \* \* \*

The same general doctrine was applied by this court in *The A. W. Thompson* (D. C.), 39 Fed., 115, 117; and in the case of *Theroux v. Railroad Co.*, 64 Fed., 84, 12 C. C. A., 52, it was held that the action would lie in Minnesota, though the two-year limitation of that state had expired, because the statute of Montana, where the death was caused, gave three years, which had not expired; and because the limitation of three years was a part of the statutory right of action, and not a limitation of the remedy merely, and hence, was not governed by the law of the forum like ordinary statutes of limitation. The proviso in question, therefore, is not a part of the statute of limitations, but a condition of the right of action, itself. \* \* \*

The answer has not pleaded this condition of the statute; but if the above view is correct, the technical rule as to pleading the statute of limitations is inapplicable. On the contrary, where the plaintiff's right is conditional, in strict-



ness he should plead performance of the condition, unless that otherwise sufficiently appears."

*Stern v. La Compagnie*, 110 Fed., 996.

An analogous suit was before the Fourth Circuit Court of Appeals in a patent case. The statute provided that there shall be no recovery of profits or damages for any infringement committed more than six years before the filing of the bill or the issuing of the writ. The court held that the statute is not a statute of limitations, but a qualification upon the right of recovery, and need not therefore be specially pleaded by the defendant in an action under section 4919, but in view of the fact that the condition is imposed by the statute the plaintiff must allege and prove performance of the condition.

*Peters v. Hanger*, 134 Fed. (4 C. C. A.), 586.

An analogous statute, giving a right of action not existing at common law, was before the Supreme Court of the United States, growing out of customs duties. The statute there limited the time within which the suit could be brought, and the Supreme Court said:

"The claimant must show not only due protest and appeal, but also a decision on the appeal and the bringing of a suit within the time limited by statute after the decision. \* \* \* The conditions imposed by the statute cannot, any of them, be regarded as matters a failure to comply with which must be pleaded by the defendant as a statute of limitation. The right of action does not exist independently of

the statute, but is conferred by it. There is no right of action on showing merely the payment of the money as duties, and that the payment was more than the law allowed, leaving any statute of limitation to be set up in defense, as in an ordinary suit. But the statute sets out with declaring that the decision of the collector shall be final and conclusive against all persons interested, unless certain things are done.

\* \* \* These steps include not only protest and appeal, but the bringing of a suit within the time prescribed."

*Arnson v. Murphy*, 115 U. S., 579.

In the Arnson case, *supra*, the court said that the question was analogous to the question in *Cheatham v. United States*, 92 U. S., 85, which arose under a statute in regard to internal revenue taxes. The statute involved in that case provided that no suit could be maintained for the recovery of taxes until after an appeal to the commissioner, and unless suit should be brought within six months, etc. The suit was not brought within the six months. It was urged that the requirements of bringing this suit was a statute of limitations, but the court held (the opinion was by Mr. Justice Miller) that the suit could not be maintained because it was not brought within the six months. The theory was that the Government had prescribed the conditions on which it would subject itself to judgments of the courts, and that the prescription of a time within which the suit must be brought is a condition on which alone the government consents to liti-

gate the matter, and such provision was not a statute of limitations.

*Cheatham v. U. S.*, 92 U. S., 85.

In Indiana the mechanic's lien statute gave one year from the time when notice is filed in the Recorder's office, or if a credit is given, one year from the expiration of such credit, during which time suit may be brought for the enforcement of a mechanic's lien, and it was in the statute expressly provided:

"If such lien shall not be enforced within the time prescribed by this section, the same shall be null and void."

In a case coming before the Supreme Court of Indiana in 1898, this statute was brought in review, it appearing that as against the owner of the property, the lien had been foreclosed within the statutory time, but the mortgagee had not been made a party, and in passing on *the contention made there as here* the court said:

"In other words, the year given by statute having expired without a foreclosure of the lien, as against the mortgage, the lien itself and the judgment based thereon must be, as to such mortgage, absolutely void. Equity cannot, as in the case of mortgages, maintain the senior lien on foot after the expiration of the year, when the statute declares it shall be void. By its foreclosure the lienholder, not having made the mortgagee a party, simply stepped into the shoes of the owner of the property; and as such

owner could not question the right of the mortgagee to foreclose against the property, neither can the lienholder now do so,—the year given him by statute to foreclose his lien having expired.”

*Deming-Colburn Lumber Co. et al. v. Union Nat. Savings & Loan Assn.*, 51 N. E., 936.

And in another case coming before the Supreme Court of Indiana, decided in 1898, a similar question was raised. Here one Helberg had executed a mortgage on a piece of property, improvements on which were under construction. The material man and laborer took the necessary steps to procure a mechanic's lien and, within the time limited by the statute, brought suit to foreclose the lien, but did not make the mortgagee a party, and later, just as in this case, purchased the property at foreclosure sale. Afterwards the mortgagee brought suit to foreclose the mortgage, and the question arose as to whether or not the lien as to the mortgagee had expired. In that case, the court, after quoting the statute above referred to, said:

“It will thus be seen that the remedy is limited to one year, and, if the complaint is not filed during that period, the lien is void. We have seen also that the remedy as against Helberg, the owner of the property, was enforced within the year. Does the statute require that the remedy shall be enforced also against existing junior lienholders, within the year, to save the validity of the senior lien? The requirement of the statute is general, and contains



no exception applicable to this case. Its object was to prevent the *ex parte* incumbrance from beclouding titles, and embarrassing dealings with reference to the property, for a longer period than one year. This object cannot be said to concern the property owner alone, for the junior encumbrancer is interested in having the lien determined while the extent of labor or materials may be more easily ascertained and while values, as to the lien, may not become obscure, and, as to the property, may not become impaired. A foreclosure as against the junior lienor alone, could hardly be said to satisfy the statutory requirement if objection were made by the property owner. If, upon such foreclosure, the year having expired, the owner could assert the invalidity of the lien, it would seem that the rule should also be upheld that a foreclosure against the owner alone would not preclude the junior lienor from asserting the invalidity of the lien as against his lien. \* \* \* If the analogy is fair, and we think it is, we may say that the foreclosure by Mosier (the mechanic's lienor) was as to the appellant (the mortgagee) as no foreclosure, and did not preclude or estop the appellant to deny the validity of the lien under the provisions of the statute. \* \* \* While we hold that the failure to make the appellant (the mortgagee) a party to his foreclosure lost to Mosier (the mechanic's lienor) the seniority of his lien, we do not hold that his foreclosure was entirely fruitless. It had the effect to

place Mosier in the shoes of Helberg (the mortgagor), and to carry to him the equity of redemption.”

*Union Nat'l Bank v. Helberg*, 51 N. E., 916.

In another Indiana case cited by Judge Diedrich in his opinion in this case, as supporting his conclusion, a mortgage had been executed in 1890 to a savings bank. Subsequently a mechanic's lienor having taken the requisite steps to obtain a mechanic's lien, brought his action to foreclose the lien within the time limited by statute as above quoted, but did not make the savings bank a party. The question having arisen as between the savings bank, the mortgagee and the mechanic's lienor after the limitation of one year, which was contained in the statute as part of the right, had expired, the court on the authority of the Helberg case, *supra*, and the Deming case, *supra*, reached the same conclusion and held the lien absolutely void.

*Stoermer v. People's Savings Bank*, 52 N. E., 606.

In another case cited by Judge Dietrich in his opinion in the instant case, as supporting his conclusion, this situation arose in Nebraska. Certain materials were furnished by one Green under a verbal contract with Jacob Dishong for the erection of a dwelling on lands owned by Sanford—Dishong being in possession through a contract between his wife and Sanford, the owner. Sanford was not made a party to the mechanic's lien pro-

ceedings brought by Green until long after the expiration of the two years limited by the Nebraska statute for the enforcement of such a lien, though the other parties were so made parties. It was contended that it was sufficient to institute the action within the time limited by the statute as against Dishong, who was in possession, and the court after referring to the case of *Manley v. Downing*, 15 Neb., 637, 19 N. W., 601, where it had been held that other parties could be brought in after the two years, expressly overruled that holding and said:

“It is manifest that the only way a mechanic’s lien can be continued in force beyond the two years is by instituting a suit within that time to enforce the lien, and the plain meaning of the statute is that it is only preserved as to the persons who are made parties to the suit prior to the limitation of the time for the bringing of such an action. A person who is not a party to suit ordinarily is not bound by the adjudication, nor is a suit deemed commenced against one until he is made a party to it; and where, in an action to enforce a mechanic’s lien, the plaintiff by amendment of his petition, as in the case at bar, brings in a new party after the limitation of two years has run as to such new party, the suit is barred.

\* \* \* The rule governing the time an action is to be considered commenced as to persons made defendants after suit is instituted to enforce a mechanic’s lien is not different from that which obtains in mortgage foreclosures and other cases. So

far as we are able to discover, all the authorities, with the single exception of *Manley v. Downing, supra*, affirm the doctrine that where, after a suit has been commenced, a new defendant is brought in after the expiration of the period limited by the statute for bringing the action as to such defendant, the suit is barred. Phil. Mech. Liens, Sec. 431; Angel, Mech. Liens, Sec. 330; Story, Eq. Pl., Sec. 904; *Miller v. McIntyre*, 6 Pet., 61; *Brown v. Goalsby*, 34 Miss., 437; *Gorman v. Judge*, 27 Mich., 140; *Dunphy v. Riddle*, 86 Ill., 22; *Crowl v. Nagle*, 86 Ill., 437; *McGraw v. Bayard*, 96 Ill., 146; *Railroad Co. v. Culbertson* (Tex. Sup.), 10 S. W. Rep., 706; *Telfener v. Dillard* (Tex. Sup.), 7 S. W. Rep., 847; *Jones v. Johnson* (Ga.), 6 S. E. Rep., 181; *Bell's Appeal* (Pa. Sup.), 8 Atl. Rep., 177."

*Green v. Sanford*, 51 N. W., 967.

The same doctrine was again announced by the Supreme Court of Nebraska, in another case cited by the court below in support of his opinion, and it was there said that the question must be regarded as settled by *Green v. Sanford*.

*Ballard v. Thompson*, 58 N. W., 1133.

And in a late Missouri case cited by Judge Dietrich there was brought into review the Missouri statute with reference to mechanic's liens, which provided:

"That all actions under this article shall be commenced within ninety days after filing the lien \* \* \*



and no lien shall continue to exist by virtue of the provisions of this article for more than ninety days after the lien shall be filed, unless within that time an action shall be instituted thereon, as hereinabove prescribed.”

The court said:

“The right to a mechanic’s lien is purely statutory and while the rule is well established that the statutes giving the right are to be liberally construed, the right itself cannot be enlarged beyond the reasonable scope of the statute. We agree with what was said by the St. Louis Court of Appeals in *Fury v. Boeckler*, 6 Mo. App., 24: ‘The proceeding is special and the person who claims under it must bring himself within its special provisions. The 90 days after which no lien is to continue to exist unless the conditions of the law are complied with are not provided as a period of repose to bar actions; on the contrary, they are a limit to the existence of the lien.’ If the plaintiff failed to bring his suit within 90 days after filing of the lien, his lien is lost; and it may be considered as settled in this and other jurisdictions that the lien is preserved beyond the period of 90 days only as to those parties who are made defendants in a suit brought within that period. After its expiration, new parties cannot be introduced by an amendment to the petition. \* \* \* It may be true that it is optional with the lien claimant whether or not parties inter-

ested in the property at the time of the creation of the lien other than the parties to the contract be made defendants in a suit brought by him; but if such parties are not made defendants, they are not bound by the proceedings, and, as we have said, they cannot be brought into the action after the expiration of the time fixed by the statute."

*Badger Lumber Co. v. Staley* (K. C. Ct. of App.),  
125 S. W., 779.

We believe the Minnesota cases and the Illinois cases referred to by the lower court are sufficiently referred to above.

The Illinois cases cannot be disposed of by what counsel has said on page 47 of the brief, of an anomalous situation there presented, for the reason that the Illinois statutes, when critically examined, show, that unlike mechanic's lien statutes in some jurisdictions, there is no priority allowed to the lienor by reason of his having filed his mechanic's lien at an earlier date than another mechanic's lienor; and the statute requires that in every mechanic's lien suit, other mechanic's lienors must be made a party. Hence the apparent anomalous situation referred to in the Granquist case and the Porter case ceases to be anomalous. The reversal there doubtless worked a hardship, but that hardship is not comparable to the confusion that would have arisen from any other holding.

## II.

Referring to the question mentioned by counsel with reference to the construction of mechanics' lien statutes, we believe it is now well settled in the courts, and especially in this circuit, that such statutes should have a fairly liberal construction; but in as much as the mechanics' lien is purely a statutory creation, the one seeking the benefit thereof must keep well within the provisions of the statute. Thus, in a case coming before this court, the question arose as to how such statutes should be construed, it being urged upon this court that they should adopt a liberal rule, and even take into account equitable rights, and thereupon the court said:

“The evident spirit and purpose of the act (a mechanics' lien act), is to do substantial justice to all parties who may be affected by its provisions, and the courts should avoid unfriendly strictness and mere technicality. (Citing *Springer v. Ford*, 168 U. S., 513; *Salt Lake v. Chainman*, 128 Fed., 509; *Hooven v. Featherstone*, 111 Fed., 81.) But in following this rule courts should always be careful not to impair the force of the statute or fritter away its meaning by construction. (Citing *Davis v. Alford*, 94 U. S., 545; *Malter v. Falcon*, 18 Nev., 209, 2 Pac., 50.) A mechanics' lien is purely of a statutory creation, and can only be maintained by a substantial observance and compliance with the provisions of the statute. Whatever is made necessary to the existence of the

lien must be performed, or the attempt to create it will be futile. A substantial adherence to the terms of the statute in the notice of the lien is indispensable. (Citing Phillips on Mechanics' Liens, 3d Ed., Sec. 9.)"

*Russell v. Hayner*, 130 Fed., 90.

And in the last above cited case, it was held that the petitioner seeking to foreclose a mechanics' lien did not show a compliance with the statute, and the court refused to entertain the bill for that purpose, and it was dismissed.

*Russell v. Hayner*, *supra*.

In a case arising in Nebraska, which went up to the Circuit Court of Appeals in the 8th Circuit, a Nebraska statute was before the court, which provided:

"that such lien shall continue for the period of two years \* \* \*; and when any suit or suits shall be commenced on such accounts within the time of such lien, the lien shall continue until such suit or suits be finally determined or satisfied."

The court said:

"The labor and material bestowed upon a building or a railroad by a contractor enhance the value of the property of the owner, and become lost to the builder. If he receives no compensation for them, he never can take them back, but the owner and those who take under him receive all their benefits. It is therefore just and equitable that the laborer and



material man should have a lien for their wages, and for the value of their materials, upon the improvements which they construct; and statutes which authorize such liens should be liberally construed, to advance this reasonable and salutary remedy. Nevertheless, the mechanics' lien does not exist under the common law. It is the creature of the statute which establishes it, and must stand or fall by the law of its creation."

*Reynolds v. Manhattan Trust Co.* (27 C. C. A.),  
83 Fed., 593.

In the above mentioned case the work was completed October 1, 1899, and the cross bill to foreclose it was filed November 2, 1901, more than two years after the completion of the work, and the court, continuing, said:

"Our conclusion, is that the true construction of this section 2171 is that the lien of the railroad contractor continues two years, and no longer, from the time when the last act is done in the performance of the contract, from the time when the lien first becomes determined in amount, complete and actionable. The lien under the first contract had, therefore, expired two months before the cross bill was filed, and the claim for this lien was properly dismissed."

*Reynolds v. Manhattan Trust Co., supra.*

From the foregoing cases, and on principle, it seems too clear for argument that the time limited for the insti-

tution of proceedings to enforce a mechanics' lien is a part of the right, and as against anyone who has an interest in contesting the lien the action must be commenced within the period limited by the statute. Referring back to the reasoning in the Bartz case (118 Pacific, 334) the very purpose of the statute was to require the mechanics' lienor to bring his suit, while the evidence upon which it rests is received to enable any party interested to successfully contest the lien. Surely such right to contest the lien is just as valuable to an encumbrancer as it is to the owner of the property.

### III.

If, too, we are correct in our proposition as above set forth, that the time limited for the foreclosure of a mechanics' lien—such time being limited by the statute which creates the right—is a part of the right and is not a statute of limitations affecting the remedy only, it necessarily follows from the cases above referred to that it was not requisite for the appellee to plead the failure to institute the action within the time limited. On the other hand, as pointed out in the Harrisburg case, *supra*, and kindred cases, one seeking to avail himself of a right given by statute in derogation of the common law must allege and prove the doing of that on which the right is made to depend.

We confidently assert, therefore, that under this record the court was amply justified in determining the ques-

tion against the appellee without going into the question at all as to whether or not the lien of the appellee was superior to the lien of the appellant. Manifestly, the court, instead of looking to the question of the priority of the two rights, found no occasion to determine any question of priority, because before he reached that question he found that, as against the appellant, the appellee had no lien. How, then, can it be said, as counsel remarks on page 16 of the brief, that the court below conceded the priority of appellant's lien? The court found there was no lien. Therefore, he could not have conceded its priority.

#### IV.

##### THE LIEN OF APPELLEE IS SUPERIOR TO THE MECHANICS' LIEN OF APPELLANT.

This is the converse of the proposition which we stated above the appellant must maintain in order to succeed before this court. Its discussion is necessary only in the event the court should find that our contention that the appellant's lien had expired by its own limitation is unsound. In the event of such holding by this court, then it would become necessary to inquire into the question of priority between the mechanics' lien and the lien of the trust deed.

The trust deed having been of record, and being concededly valid, created a lien upon everything upon which it operated on the date of its recordation, to-wit: March 19, 1909.

Confessedly, the appellant did no work on the enterprise and furnished no material for the enterprise until the 13th day of July, 1909.

Section 5114 of the Idaho statutes, set out on page 55 of the appellant's abstract, shows that mechanics' liens in Idaho take preference to mortgage which attached subsequent to the time when the work was done by the laborer or material was furnished by the material man, and also takes priority to the lien of a mortgage which was unrecorded.

It seems to follow, therefore, from the statute that a mortgage which had attached prior to doing the work or furnishing the material, and which was recorded, takes priority over the mechanics' lien.

Now, what is the contention of the appellant for his claim to priority? Manifestly it is based solely and only upon the claim that the right of way for ditches was acquired by the Irrigation Company by virtue of the furnishing of this material by the appellant for the two small pipe lines which were built and which were not a part of the original enterprise.

It seems to us that the proposition need only be thus stated to show its fallacy. The evidence fails to show that the pipe line was in fact constructed over property, the title to which remained in the United States. The very contract between the State of Idaho and the Irrigation Company which is before the court provides that the State grants to the Company a right of way over the lands. The whole argument for counsel for appellant



for priority of the mechanics' lien rests upon *Bear Lake v. Garland*, 164 U. S., 1; but when the facts as here proven are considered they fall far short of coming within that case. The contract here between the Irrigation Company and the State was entered into on May 1st, 1908, and, as above pointed out, the trust deed, constituting a lien, was of record March 19, 1909. The supplemental trust deed provided that the bond could not be certified or delivered until certain officers of the Kings Hills Company furnished sworn evidence of the completion of the system to an extent sufficient to deliver water to the lands embraced in the water contracts, and the record shows that such evidence was furnished and that the Trustee actually certified bonds prior to July 1st, 1909, which could not be done unless the system was completed so as to deliver water to the lands under it to the extent required by the supplemental trust deed, and this was all prior to the furnishing of any material or the doing of any labor by the appellant.

And, too, as above pointed out, the material furnished by the appellant was used for the two small laterals, one known as the Kings Hill syphon, which carries the water across Snake River into Elmore County for irrigating lands in the townsite of Kings Hill and vicinity, which lands were no part of the irrigation project as originally contemplated, and as contracted for with the State. The balance of the material was furnished for the so-called Tuana Gulch branch which was a small lateral.

There is absolutely no evidence that any part of the

system was constructed over Government land, or land to which both the legal and equitable title still stood in the United States Government. The Kings Hill syphon was constructed over private land, as above pointed out, and while it may be that the Tuana Gulch syphon was constructed over Carey Act land, there is not the slightest evidence to show that the title to the right of way was acquired solely because the pipe line was so constructed, and thus bring the instant case within the Bear Lake case.

There can, therefore, be no foundation for the contention that the title to the entire irrigation system was dependent upon the construction of the two small pipe lines for which appellant furnished material, and that such title vested in the Kings Hill Company because of the construction of the pipe lines.

We confidently assert, therefore, that the decree of the trial court was right and should be affirmed on the ground on which the decision was grounded by the lower court; and, further, that in event such ground was not sound, then on the proposition that the lien of the trust deed was, in fact, superior to the mechanics' lien.

Respectfully submitted,

LEVY MAYER,

Of Chicago, Illinois,

CHARLES L. POWELL,

Of Chicago, Illinois,

RICHARDS & HAGA,

Of Boise, Idaho,

*Solicitors for Appellee.*

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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CONTINENTAL & COMMERCIAL TRUST AND  
SAVINGS BANK, as Trustee,

Appellee,

vs.

PACIFIC COAST PIPE COMPANY, a Corporation,  
Appellant,

and

KINGS HILL IRRIGATION & POWER COMPANY  
et al.,

Defendants.

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SUPPLEMENTAL BRIEF OF APPELLANT,  
PACIFIC COAST PIPE COMPANY.

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Upon Appeal from the United States District Court for  
the District of Idaho, Southern Division.

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N. M. RUICK,  
Solicitor for Appellant, Pacific Coast Pipe Company.

Filed

FEB 13 1915

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F. D. Monckton,  
Clerk.





*In the United States Circuit Court of Appeals for the  
Ninth Circuit.*

CONTINENTAL AND COMMERCIAL TRUST  
AND SAVINGS BANK, as Trustee,

Appellee,

vs.

PACIFIC COAST PIPE COMPANY, a Corpora-  
tion,

Appellant,

and

KINGS HILL IRRIGATION & POWER COM-  
PANY et al.,

Defendants.

**Supplemental Brief of Appellant, Pacific Coast Pipe  
Company.**

The appellee in its brief has challenged the right of the appellant to a prior lien upon the property, and asks this court to sustain the judgment of the lower court in this case upon the ground that the lien of the mortgage is prior to that of the mechanic's lien, even if the court shall find that the lower court was in error in its holding that the mechanic's lien had expired by limitation.

CANAL CONSTRUCTED ON PUBLIC LANDS  
AND CAME INTO BEING BURDENED  
WITH LIEN OF CROSS-COMPLAINANT.

It is alleged by the Pipe Company, and denied by the plaintiff and the several defendants, that the ditch or canal was constructed over public lands of the United States.

These works were being constructed pursuant to the provisions of what is known as the Carey Act, (Sec. 4, Act of Aug. 18, 1894, 28 Stats. 372-422), for the purpose of reclaiming certain desert lands of the United States upon the application made to the State of Idaho by the Glenns Ferry Land & Irrigation Company, the predecessor of the Kings Hill Irrigation & Power Company. The State of Idaho had applied to the United States and had procured the segregation of these lands.

The lands thus segregated are described in plaintiff's, Pacific Coast Pipe Company, Exhibit No. 3 (in Suit No. 351), [Tr., p. 371 Ex. "G"], denominated "Articles of Agreement between E. H. Hitchcock, Secretary of the Interior, on behalf of the United States, and John T. Morrison, Governor, on behalf of the State of Idaho." It is on and over these lands thus segregated that the canals, laterals and other works constituting the irrigation system were constructed.

It is plain from the language of the Carey Act, as well as the agreement entered into between the State and the United States, that these lands continue to be lands of the United States until the same shall have been fully reclaimed, and any and all parties claiming any right, title or interest in and to these lands take the same subject to the requirements of the Act of Congress and the term of the contract referred to, and the State must "show full compliance therewith before it shall have any claim against the United States for a patent to said lands."

Under the Carey Act and the terms of this agree-

ment, the State becomes merely a trustee for the United States, the purpose of which trust is to procure the reclamation and settlement of these lands, and only when a compliance with all the requirements shall have been established does any title pass from the United States to the State or to the settlers upon the tract. It is not a present grant but a grant to take effect in the future upon a compliance with the conditions of the law and agreement. Therefore, these lands on and over which these works were constructed continued to be lands of the United States, and no right, title or interest therein or thereto, nor any right of way on or over the same, could be acquired except by a completion of the works.

Bear Lake Irrigation Co. v. Garland, 164 U. S. 1.

But the Trust Company and the defendants, in order to avoid the force of this statement, backed by the Garland case, alleged that they acquired a right of way from the State of Idaho. In reply to this, we say that, if the title to the lands remained in the United States, it is clear that the State of Idaho could not grant any rights or privileges with respect thereto. To do so would be for the State to interfere with the "primal disposal of the soil," prohibited by the Federal Constitution. But, assuming, for the sake of argument, that the State of Idaho had some interest in these lands by reason of the same having been segregated and set apart for the purpose of being reclaimed under the auspices of the State, we say that no right of way was ever granted by the State of Idaho, and that the Irrigation Company acquired no right of way, nor any

right, title or interest in these lands by reason of any agreement made by the State.

EVEN AS STATE LANDS RIGHT OF WAY  
THEREON ONLY ATTACHES UPON COM-  
PLETION OF CANALS AND SUBJECT TO  
MATERIALMEN'S LIEN.

Treating these lands as State lands, or as lands in which the State has an interest, the Revised Codes of Idaho, section 1635, provide the only method by which a right of way for canals, reservoirs, etc., over State lands can be acquired, and there is no proof nor pretence that this method was pursued by the Irrigation Company in this instance.

Neither does the agreement between the State of Idaho and the Kings Hill Irrigation & Power Company bear out the claim made.

Paragraph 3 of the agreement between the State and the Irrigation Company, of date May 1, 1908 (Cross-complaint P. C. P. Co., Exhibit 1), [Tr., p. 340, par. 111], provides as follows:

“The said party of the first part grants to the said party of the second part a right of way across all lands *belonging to the State of Idaho or that may be ceded* to the State of Idaho by virtue of the Act of Congress commonly known as the Carey Act or by any other laws for the construction and operation of said reservoir and irrigation system.”

But these were not lands “belonging to the State of Idaho” nor lands “ceded to the State by virtue of the Act of Congress commonly known as the Carey Act.” It is clear that the State made no at-



tempt by this contract to convey a right of way over lands to which it had no title. It simply agreed that, so far as the State was concerned, in anticipation of the ultimate ceding of these lands to the State of Idaho by virtue of their reclamation, it would waive its right hereafter to deny the rights of the Canal Company, but it should be borne in mind that, even as to this, the State and the Irrigation Company were not proceeding in the manner provided by the statutes of Idaho relating to the acquisition of rights of way.

Hence, the Irrigation Company acquired a right of way only by virtue of the completion of its canals.

Neither is it shown that the irrigation company acquired a right of way over any private or entered lands except by virtue of its construction and completion of the canal. This statement applies to the desert entry and Carey Act entry of Mrs. Hammett at or near the point where the Kings Hill Syphon pipe-line connects with the Kings Hill Branch Canal, as also to the private lands north of the river, which are irrigated through this pipe-line and, under the authority of *Bear Lake etc. v. Garland, supra*, the lien would hold the same as in the case of public lands of the United States.

It is claimed that, prior to July 13, 1909, the date on which the Pipe Company began to furnish materials, the canal and works had been completed. It appears, however, by the maps in evidence that in December, 1908, the Irrigation Company filed in the office of the State Board of Land Commissioners (or the State Engineer) a map of the project show-

ing the line of the main canal, and that, at the same time, it filed a map of its distribution system, which last named map shows the several laterals for which materials were furnished by the Pipe Company.

It can hardly be contended that the completion of the main canal was a completion of the project or as in any sense a compliance on the part of the Irrigation Company with its agreement with the State.

The system was to be constructed as a whole and was essential to the reclamation of the lands which the Irrigation Company had undertaken to reclaim. We say, therefore, that the works were not completed until the irrigation system outlined in plans formulated by the Company's engineers, and which plans were accepted and approved by the State, were actually executed, and there is even now, and was at the time of the trial, an absence of proof that the project has even yet been completed in compliance with the agreement with the State. The fact, as stated in the Supplemental Trust Deed that the bonds could not be certified by the Trustee under the mortgage, except upon sworn evidence to be furnished by the officers of the company that the system was completed to an extent sufficient to furnish water to the settlers, is no evidence of its completion. It is and was at best a self-serving declaration, and there is a total absence of proof that the State Engineer or State Land Board, the only authorities qualified to pass upon the question, had approved the system as completed. If this system had, or has, been completed, there would be proof of that fact in the Record, by evidence of an official character, easy to ob-

tain. We contend, therefore, that the evidence shows that the project was in the constructive stage during the times that the material described in the lien of the Pacific Coast Pipe Company was furnished and used, and we have the testimony of Mr. Swendson, the Chief Engineer (See testimony p. 9, taken before Examiner at Boise, in cause No. 351, Pacific Coast Pipe Co. v. Kings Hill Irrigation & Power Co.) [Tr. pp. 301-306], that all these materials were ordered to be used in the construction of the system and that they were actually used in such construction and were essential to the completion of the system.

Counsel for the Trust Company, on cross-examination of Mr. W. G. Swendson, made an apparent attempt to show that the invoices of pipe furnished for the Tuano Gulch pump and pipe-line was something foreign to the main enterprise, but Mr. Swendson, on redirect examination, showed that these works were for the purpose of, and were necessary to, the irrigation of lands which had been segregated at the request of the irrigation company and which it had contracted with the State to irrigate and reclaim.

Now, as to the Kings Hill Branch: It appears by the map of the distribution system filed and approved Dec. 17-18, 1908 (see maps attached as exhibits to depositions for plaintiff in cause No. 351, transmitted to and now on file with the clerk in this cause, No. 2452), that the Kings Hill Branch was in contemplation and that it was a part of the system to be constructed pursuant to the agreement between the company and the state. The Kings Hill





United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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L. A. PEDERSEN,

Appellant,

VS.

PATRICK F. DUNDON,

Appellee.

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Transcript of Record.

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Upon Appeal from the United States District Court  
for the Northern District of California,  
Second Division.

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Filed

AUG 29 1914

F. D. Monckton,  
Clerk.



**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States in and for  
the Northern District of California, Second  
Division.*

No. 15,327—IN EQUITY.

PATRICK F. DUNDON

vs.

A. L. PEDERSEN.

**Interlocutory Decree.**

At the March term of the District Court of the United States in and for the Northern District of California, Second Division, held at the courtroom thereof in San Francisco, California, on the 13th day of July, in the year of our Lord one thousand nine hundred and fourteen. Present: The Hon. WILLIAM C. VAN FLEET, District Judge.

This cause heretofore regularly came on to be heard and was argued by counsel; and thereupon, upon consideration thereof, it is hereby ordered, adjudged and decreed as follows:

That the letters patent, No. 653,503, granted and issued on the 10th day of July, 1900, to Patrick F. Dundon, being the letters patent referred to in the bill of complaint herein, are good and valid as respects the third claim therein specified.

That the said Patrick F. Dundon was the first and original inventor of the improvement in Doors for Digesters covered by said third claim and always since the issuance of said letters patent has been and now is the owner and holder of the entire interest therein and of all rights, liberties, and privileges by them granted and conferred. [1\*]

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\*Page number appearing at foot of page of original certified Record.

That L. A. Pedersen, defendant herein, prior to the commencement of this suit, infringed upon claim 3 of said letters patent and upon the exclusive rights of the complainant under the same; that is to say by making and using Doors for Digesters embodying said invention and improvement covered by said third claim and patented as aforesaid, as charged in said bill of complaint.

And it is further ordered, adjudged and decreed, that the complainant do recover of the defendant the profits, gains and advantages which the said defendant has received or made, or which have arisen or accrued to him by the manufacture, use or sale of Doors for Digesters, in violation of claim 3 of said letters patent, and that the complainant do recover the damages resulting from said infringement.

And it is further ordered, adjudged and decreed, that the said complainant do recover of the defendant his costs and charges and disbursements in this suit to be taxed in due course.

And it is further ordered, adjudged and decreed, that this cause be referred to Hon. H. M. Wright, Master in Chancery, of this court, to ascertain and take, and state, and report to the Court an account of the number of Doors for Digesters embodying said invention and improvement as described and secured in claim 3 of said letters patent made, used or sold by said defendant, and also the gains, profits and advantages which the said defendant has received or which have arisen or accrued to him from infringing the said exclusive rights of the said complainant by the manufacture, use or sale of the said improvement in



Doors for Digesters described and secured by claim 3 of said letters patent and the damages which the complainant [2] has suffered by said infringement.

And it is further ordered, adjudged and decreed that the complainant on such accounting have the right to cause the examination of the defendant *ore tenus* or otherwise, and also the production of the books, vouchers and documents of said defendant, and that the defendant attend for such purpose, before said master, from time to time as said master shall direct.

And it is further ordered, adjudged and decreed that a perpetual injunction be issued in this suit against the said defendant restraining him, his agents, clerks, servants, and all claiming or holding under or through him, for making, using or selling, or in any way disposing of Doors for Digesters embracing the invention or improvement described in claim 3 of said letters patent pursuant to the prayer of the said bill of complaint.

WM. C. VAN FLEET,

Judge.

Receipt of copy of the within decree admitted this third day of July, A. D. 1914.

MILLER & WHITE,

For L. A. PEDERSEN.

[Endorsed]: Filed and entered July 13, 1914.  
Walter B. Maling, Clerk. [3]

*In the District Court of the United States in and for  
the Northern District of California, Second  
Division.*

No. 15,327—IN EQUITY.

PATRICK F. DUNDON,

Complainant,

vs.

L. A. PEDERSEN,

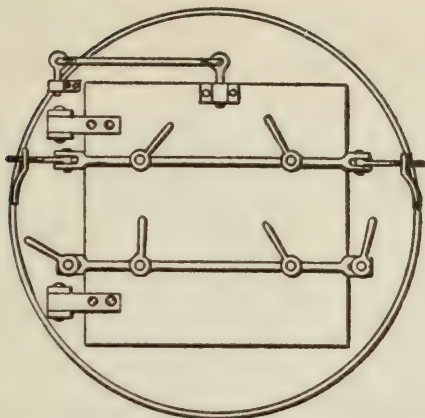
Defendant.

**Agreed Statement of Case.**

It is hereby STIPULATED and AGREED by and between the parties to the above-entitled suit that the appeal therein from the interlocutory decree may be heard upon the following statement of the facts and the exhibits referred to therein, and said statement of facts is hereby agreed to be correct.

The complainant, at all times, has been the sole and exclusive owner of United States letters patent No. 653,503, issued to him on July 10, 1900, for "Door for Digesters," the same being the letters patent sued on herein.

Within one year prior to the commencement of this suit, the defendant made and used without the license of complainant, a door for digesters, of which the following is a correct drawing: [4]



Prior to the commencement of this suit, complainant notified defendant said structure infringed the letters patent in suit.

The third claim of said letters patent in suit was the only claim relied on by the complainant.

The defendant contended that the limitations contained in said third claim should not be ignored and that said limitations differentiated the defendant's said structure from that covered by said third claim.

The above-entitled court, notwithstanding said limitations, adjudged the defendant's said structure to embody the combination of elements covered by said third claim.

The following letters patent were offered in evidence and same are made a part hereof, for use upon the determination of said appeal, to wit:

United States letters patent No. 653,503, issued on July 10, 1900, to Patrick F. Dundon, for "Door Digesters."

United States letters patent No. 418,867, issued on January 7, 1890, to Patrick F. Dundon for "Discharge Door for Steam Digesters and Retorts."

United States letters patent No. 439,125, issued on October 28, 1890, to R. S. Dixon, for "Vacuum Pressing Apparatus."

United States letters patent No. 375,903, issued on January 3, 1888, to Peter Unfried for "Gate."

FRANCIS M. WRIGHT,  
Solicitor for Complainant.  
MILLER & WHITE,  
Solicitors for Defendant.

The foregoing statement of the case is hereby approved.

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Jul. 15, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

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*In the District Court of the United States in and for  
the Northern District of California, Second  
Division.*

No. 15,327—IN EQUITY.

PATRICK F. DUNDON,  
Complainant,  
vs.

L. A. PEDERSEN,  
Defendant.

**Petition for Order Allowing Appeal.**

The defendant above named, L. A. Pedersen, feeling himself aggrieved by the interlocutory decree and order made and entered in the above-entitled case on the 13th day of July, 1914, wherein and whereby it is



Ordered and Decreed that the said defendant be enjoined and restrained from infringing claim 3 of United States letters patent No. 653,503, issued on July 10, 1900, to Patrick F. Dundon, for Door Digesters, sued on in said case and referred to in the Bill of Complaint therein;

Comes now, by his solicitors, Messrs. Miller & White, and prays this Court for an order allowing the said defendant to prosecute an appeal from the said interlocutory order and decree, to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which defendant shall give and furnish upon such appeal.

And your petitioner will ever pray, etc.

JOHN H. MILLER, and  
WM. K. WHITE,  
MILLER & WHITE,

Solicitors and Counsel for Defendant. [6]

Due, legal and timely service of the foregoing petition for an order allowing appeal is hereby admitted, and a receipt of a copy of the foregoing instrument is hereby acknowledged on this 14th day of July, 1914.

FRANCIS M. WRIGHT,  
Solicitor for Complainant.

[Endorsed]: Filed Jul. 15, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [7]

*In the District Court of the United States in and for  
the Northern District of California, Second  
Division.*

No. 15,327—IN EQUITY.

PATRICK F. DUNDON,

Complainant,

vs.

L. A. PEDERSEN,

Defendant.

**Assignment of Errors.**

Comes now defendant above named and specifies and assigns the following errors upon which he will rely upon his appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the interlocutory order and decree made and entered by this Honorable Court on the 13th day of July, 1914, granting an injunction against said defendant:

1. The District Court of the United States for the Northern District of California, Second Division, erred in granting the injunction against the defendant contained in the said decree herein entered.

2. The said District Court erred in granting any relief whatever against the defendant.

3. The said District Court erred in finding and adjudging that the defendant had infringed the third claim of United States letters patent No. 653,503 and herein sued on.

4. The said District Court erred in adjudging that said third claim of said letters patent, was good or valid in law. [8]

5. The said District Court erred in awarding and adjudging that the limitations expressed in said claim three should be ignored.

6. Said District Court erred in not holding and adjudging that the complainant was estopped by his statements in the specification of said letters patent, and by the limitations contained in the third claim of said letters patent, from claiming, maintaining, or contending that a retort door made like defendant's and in which the pressure bars did not operate as hinges, embodied the combination of elements of said claim three in said letters patent.

7. Said District Court erred in not dismissing the complainant's bill of complaint herein, and awarding costs to the defendant.

8. Said District Court erred in adjudging that complainant recover from defendant, both the profits and advantages which the said defendant received or made, or which arose or accrued to him, by the manufacture, use or sale of doors, in violation of claim three of said letters patent, and the damage suffered by complainant by reason of said infringement.

In order that the foregoing assignment of errors may appear of record, the defendant presents the same to the Court and prays that such disposition may be made thereof, as is in accordance with the law of the United States:

WHEREFORE, L. A. Pedersen, defendant herein, prays:

That said interlocutory decree be reversed; and

That said District Court of the United States in and for the Northern District of California, Second

Division, be directed to enter a decree dismissing the Bill of Complaint herein, and [9] awarding costs to the defendant; all of which defendant respectfully submits.

JOHN H. MILLER and  
WM. K. WHITE,  
MILLER & WHITE,  
Solicitors and Counsel for Defendant.

Due, legal and timely service of the foregoing assignment of errors is hereby admitted and the receipt of a copy thereof is hereby acknowledged this 14th day of July, 1914.

FRANCIS M. WRIGHT,  
Solicitor for Plaintiff.

[Endorsed]: Filed Jul. 15, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

---

**[Order Allowing Appeal and Fixing Amount of Bond.]**

*In the District Court of the United States in and for  
the Northern District of California, Second  
Division.*

No. 15,327—IN EQUITY.

PATRICK F. DUNDON,

Complainant,

vs.

L. A. PEDERSEN,

Defendant.

ORDER ALLOWING APPEAL IN THE  
ABOVE-ENTITLED CASE.



The defendant having filed his petition for an order allowing an appeal, together with an assignment of errors:

NOW, upon motion of William K. White, Esq., solicitor for defendant;

It is ORDERED that the said appeal be and is hereby allowed to said defendant, to the United States Circuit Court of Appeals, from the interlocutory order and decree made and entered on the 13th day of July, 1914, and that the amount of said defendant's bond on said appeal be, and is hereby fixed at the sum of Two Hundred and Fifty Dollars (\$250.00).

It is further ORDERED, that upon the filing of said security, a certified transcript of the record and proceedings herein, be forthwith transmitted to said United States Circuit Court of Appeals, for the Ninth Circuit, in accordance with the rules in equity of the Supreme Court of the United States and statutes made and provided.

WM. C. VAN FLEET,

Judge.

Dated July 15th, 1914.

[Endorsed]: Filed Jul. 15, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [11]

*In the District Court of the United States, in and for  
the Northern District of California, Second  
Division.*

No. 15,327—IN EQUITY.

PATRICK F. DUNDON,

Complainant,

vs.

L. A. PEDERSEN,

Defendant.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That Massachusetts Bonding and Insurance Company, a corporation organized and existing under the laws of the commonwealth of Massachusetts, and duly licensed to transact a suretyship business in the State of California, is HELD and firmly BOUND unto Patrick F. Dundon, plaintiff in the entitled suit, in the penal sum of Two Hundred and Fifty Dollars (\$250.00) to be paid to the said Patrick F. Dundon, his heirs, executors or assigns, for which payment, well and truly to be made, the Massachusetts Bonding and Insurance Company, binds itself, its successors and assigns, firmly by these PRESENTS.

The condition of the foregoing obligation is such, that

WHEREAS, the said L. A. Pedersen, defendant in the above-entitled suit, is about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the order and decree made and entered on the 13th day of July, 1914, by the District Court of the United States for the Northern

District of California, Second Division, in the above-entitled suit, by which the said defendant was enjoined and restrained from infringing claim three of United States letters patent No. 653,503, [12] issued to Patrick F. Dundon, on July 10, 1900, for Door Digesters;

NOW, THEREFORE, the condition of the foregoing obligation is such, that if said L. A. Pedersen shall prosecute his said appeal to effect, and shall answer for all costs which may be adjudged against him if he fail to make good the said appeal, then this obligation shall be void; otherwise the same shall remain in full force and effect.

Dated at San Francisco, Calif., July 15, 1914.

THE MASSACHUSETTS BONDING AND  
INSURANCE COMPANY.

By JAMES W. MOYLES, [Seal]

Its Attorney in Fact.

And S. W. PALMER,

Its Attorney in Fact.

Approved this 15th day of July, 1914.

WM. C. VAN FLEET.

[Endorsed]: Filed Jul. 15, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [13]

*In the District Court of the United States, in and for  
the Northern District of California, Second  
Division.*

No. 15,327—IN EQUITY.

PATRICK F. DUNDON,

Complainant,

vs.

L. A. PEDERSEN,

Defendant.

**Order for Withdrawal of Exhibits.**

Good cause appearing *thereof*, it is hereby

ORDERED that the following named exhibits on file herein may be withdrawn from the files herein, for the purpose of being transmitted by the Clerk of this court, to the United States Circuit Court of Appeals for the Ninth Circuit, as part of the transcript of record on appeal herein; the same to be returned to said Clerk of this court on the final determination of said appeal, to wit:

U. S. Letters patent No. 653,503, issued on July 10, 1900, to Patrick F. Dundon.

U. S. letters patent No. 418,867, issued on January 7, 1890, to Patrick F. Dundon for "Discharge Door for Steam Digesters and Retorts."

U. S. letters patent No. 439,129, issued on October 28, 1890, to R. S. Dixon for "Vacuum Pressing Apparatus."

U. S. letters patent No. 375,903, issued on January 3, 1888, to Peter Unfried for "Gate."

WM. C. VAN FLEET,

Judge.



[Endorsed]: Filed Jul. 15, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [14]

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*In the District Court of the United States, in and for  
the Northern District of California, Second  
Division.*

No. 15,327—IN EQUITY.

PATRICK F. DUNDON,

Complainant,

vs.

L. A. PEDERSEN,

Defendant.

**Praeceptum for Transcript of Record.**

To W. B. Maling, Esq., Clerk of the Above-entitled  
Court:

You will please prepare and embody in the transcript of record on appeal herein from the interlocutory decree the following papers, to wit:

1. Interlocutory Decree.
2. Agreed Statement of Case.
3. Patent Exhibits referred to in said Statement of Case.
4. Petition for Order Allowing Appeal.
5. Assignment of Errors.
- 5½. Order Allowing Appeal.
6. Bond on Appeal.
7. Order for Withdrawal of Exhibits.
8. Citation on Appeal.

MILLER & WHITE,  
Solicitors for Defendant.

Due service and receipt of copy of the foregoing praecipe is hereby admitted, this 15th day of July, 1914.

FRANCIS M. WRIGHT,  
Solicitor for Complainant.

[Endorsed]: Filed Jul. 15, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

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*In the District Court of the United States, in and for  
the Northern District of California, Second  
Division.*

No. 15,327—IN EQUITY.

PATRICK F. DUNDON,

Plaintiff,

vs.

A. L. PEDERSEN,

Defendant.

**Clerk's Certificate to Record on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing fifteen (15) pages, numbered from 1 to 15 inclusive, to be full, true and correct copies of the Interlocutory Decree; Agreed Statement of Case; Petition for Order Allowing Appeal; Assignment of Errors; Order Allowing Appeal; Bond on Appeal; Order for Withdrawal of Exhibits; and Praecipe for Transcript of Record, as the same remain on file and of record in the above-entitled cause, and that the same constitute

the record on appeal to the United States Circuit Court of Appeals, for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$8.80; that said amount was paid by Messrs. Miller & White, attorneys for defendant; and that the original Citation issued in said cause is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 8th day of August, A. D. 1914.

[Seal]                      WALTER B. MALING,  
Clerk of the United States District Court, Northern  
District of California.    [16]

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**[Citation on Appeal (Original)].**

UNITED STATES OF AMERICA—ss.

The President of the United States, to PATRICK F.  
DUNDON, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the 14th day of August, 1914, being within thirty days from the date hereof, pursuant to an Order Allowing Appeal, filed in the Clerk's office of the District Court of the United States, for the Northern District of California wherein L. A. PEDERSEN is appellant and you are appellee, to show cause, if any there be, why the Interlocutory Decree rendered against the said appellant, as in the said Order Allowing Appeal mentioned, should not be corrected, and why speedy jus-

tice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 15th day of July, A. D. 1914.

WM. C. VAN FLEET,  
United States District Judge.

Service of within Citation by copy admitted this 16th day of July, A. D. 1914.

FRANCIS M. WRIGHT,  
Attorney for Plaintiff-Appellee.

[Endorsed]: No. 15,327. In the District Court of the United States for the Ninth Circuit, Northern District of California. L. A. Pedersen, Appellant, vs. Patrick F. Dundon, Appellee. Citation. Filed July 16th, 1914. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

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[Endorsed]: No. 2462. United States Circuit Court of Appeals for the Ninth Circuit. L. A. Pedersen, Appellant, vs. Patrick F. Dundon, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Received and filed August 12, 1914.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.



[Complainant's Exhibit "A."]

THE UNITED STATES OF AMERICA.

No. 653,503.

To All to Whom These Presents Shall Come :

WHEREAS, Patrick F. Dundon, of San Francisco, California, has presented to the Commissioner of Patents a petition praying for the grant of Letters Patent for an alleged new and useful improvement in Doors for Digesters, a description of which invention is contained in the Specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of Law in such cases made and provided, and

WHEREAS, upon due examination made the said Claimant is adjudged to be justly entitled to a Patent under the Law.

Now therefore these Letters Patent are to grant unto the said Patrick F. Dundon, his heirs or assigns for the term of Seventeen years from the tenth day of July, one thousand nine hundred, the exclusive right to make, use and vend the said invention throughout the United States and the Territories thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this Tenth day of July, in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fifth.

[Seal]

F. L. CAMPBELL,

Assistant Secretary of the Interior.

Countersigned.

C. H. DUELL,

Commissioner of Patents.

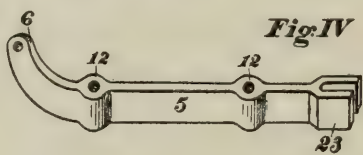
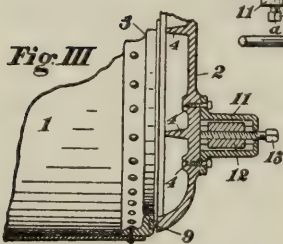
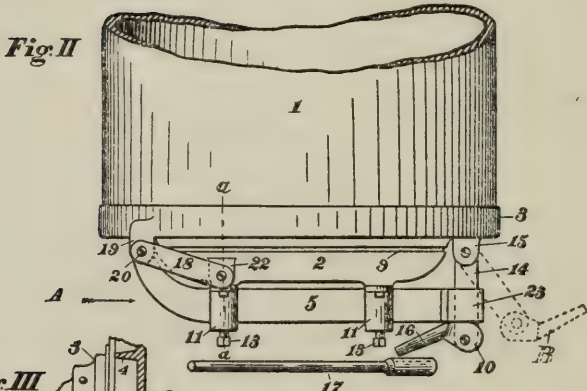
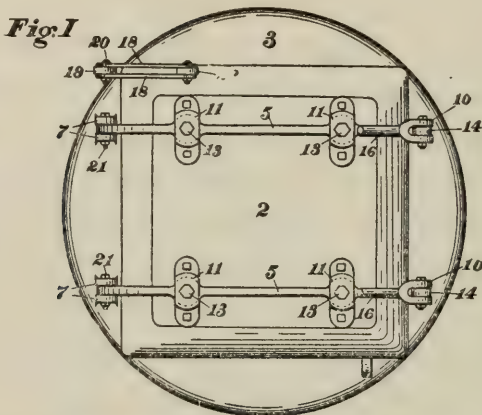
No. 653,503.

Patented July 10, 1900.

P. F. DUNDON.  
DOOR FOR DIGESTERS.

(Application filed Mar. 20, 1900.)

(No Model.)



WITNESSES.

P. W. J. Lander,  
A. Bonchard

INVENTOR

P. F. Dundon  
BY  
Richardson & Co.  
ATTORNEYS

## UNITED STATES PATENT OFFICE.

PATRICK F. DUNDON, OF SAN FRANCISCO, CALIFORNIA.

## DOOR FOR DIGESTERS.

SPECIFICATION forming part of Letters Patent No. 653,503, dated July 10, 1900.

Application filed March 30, 1900. Serial No. 10,838. (No model.)

*To all whom it may concern:*

Be it known that I, PATRICK F. DUNDON, a citizen of the United States, residing at San Francisco, county of San Francisco, and State of California, have invented certain new and useful Improvements in Hermetically-Sealing Doors; and I hereby declare the following to be a full, clear, and exact description of the same, reference being had to the accompanying drawings, forming a part of this specification.

My invention relates to doors for hermetically sealing retorts, digesters, or other vessels that sustain internal pressure, and to certain improvements in devices for hinging, closing, and securely sealing such doors, being an improvement on an invention described in Letters Patent No. 418,867, granted to me on the 7th day of January, 1890, for an improved discharge-door for steam digesters and retorts.

My present improvements consist in two or more bars that span the doors, bearing usually at four points thereon, so selected as to equalize the pressure around the sealed joints and utilize the full strength of the door itself in resisting the compressing strain; also, consists in the manner of hinging the doors by means of the bearing-bars and a compensating link pivoted coincident therewith, and in other structural devices that will be particularly pointed out and explained by the aid of the drawings herewith and forming a part of this specification.

The main objects of my invention are celerity of action in opening and closing such doors, security against leaks, and to utilize the bearing-bars as hinges on which the door may swing and thus dispense with independent pivoting devices, avoiding the cost and complication of the latter.

Referring to the drawings, Figure I is a front elevation of one of my improved sealing-doors and the frame on which it is mounted. Fig. II is a top view of the same door and part of a cylinder or retort to be closed by the door. Fig. III is a section on the line *a a* in Fig. II looking in the direction indicated by the arrow at *A* in Fig. II. Fig. IV is a view in perspective of one of the pressing-bars, also forming a hinge for the door.

In sealing-doors of the class here illus-

trated, especially for retorts that are frequently opened and closed, as in treating food, it is an object to quickly open and close the doors, also to produce a close joint without the use of numerous independent clamping-screws. This is accomplished by the devices shown in the drawings, wherein—

1 is a vessel or retort to be closed or sealed, 2 the door, and 3 the door-frame.

The vessel 1 can be of any form and for any purpose requiring a sealing-door made of plates and riveted to the door-frame 3, as shown in Fig. III, or cast integrally therewith, as circumstances may require. The door 2 is of a curved or dished form to give it strength and reinforced by ribs 4 on the inside, as shown in Fig. III. The pressure-bars 5 are of a deep section, curved at the ends 6 to fit between the lugs 7 on the door-frame 3, forming hinges by which the door is supported and on which it swings when opened or closed. The door 2 closes on an elastic gasket 9, that can be inserted in a groove in either the door 2 or the frame 3 in the usual manner and is pressed inward by the bars 5 and cams 10, as shown in Fig. II. The bars 5 are adjustably attached to the door 2 by means of the housings 11, which fit loosely over the reinforced bosses 12, through which pass the compression-screws 13, that bear upon the door, as seen in Fig. III. The cams 10 are supported on the links 14, that are held by lugs 15, cast on the head 3, and when out of use are swung out of the way, as indicated by dotted lines at *B* in Fig. II. These cams are provided with short handles that serve except for the opening and final closing force, when a socket-lever 17 is applied.

The housings 11, as will be seen, permit some play of the bars 5, and the door 2 is not held rigidly thereby. To prevent lost or undesirable motion of this kind, I provide the radius-links 18, attached to the lug 19 on the door-frame and lug 22 on the door, the fixed pivot 20 being coaxial with the pivots 21 of the bars 5. The cams 10 are made with more or less eccentricity, as the amount of pressure required, and when set for closing, as in Fig. II, the extreme of the eccentric passes the point of impingement, so the cam is locked or held against accidental release. In this

manner it will be seen that the tendency of the door 2 to turn in its flat plane about the pivots 21 is resisted by the links 18, thus producing the effect of closely-fitting hinges and a true and steady movement of the door in opening and closing.

In operating, the door 2 is closed, the links supporting the cam 10 are swung into place between the jaws 7 on the bars 5, and the cams are then turned to the position shown in Fig. II, so their flattened faces will bear against the bars 5. The screws 13 are then screwed down on the door 2, pressing it on its seat until there is no leak, and pressure is evenly distributed over the door. To open the door, the socket-bar 17 is applied, the cam 10 turned until loosened, the bar 17 is removed, and the cam 10 swung out of the way, as indicated at B in Fig. II. The door 2 is then free to swing open. On again closing, the pressure exerted by the screws 13 will be the same as before; but if there is any leak or want of pressure these screws can be severally adjusted to produce any desired strain upon the door generally or upon any corner thereof.

I claim as my invention—

1. In a hermetically-closing door, a pressure-bar 5, curved at one end and slotted at the other, the curved end connected to the frame on which the door closes by a hinged connection, in combination with a link and cam pivoted to the frame and coöperating

with said bar at the slotted end, and compression-screws 13, substantially as specified. 35

2. In a hermetically-closing door, the pressing-bars 5 pivoted to the door-frame and forming supporting-hinges for the door, the adjusting-screws 13 bearing upon the door and distributing the pressure thereon at four or more points, and the housings 11 to connect the door and the pressing-bars, combined and operating substantially as specified. 40

3. In a hermetically-closing door, pressing-bars to force the door upon its seat, bearing at four or more points thereon, forming also hinges for the door, and in combination therewith the radius-links 18 pivoted in the same axial line as the pressing-bars and holding the door in adjustment thereon, substantially as specified. 45 50

4. In a hermetically-closing door, the pressing-bars 5, provided with the adjusting-screws 13 to bear at four or more points on the door, forming also supporting-hinges for the same, the housings 11, links 18, and cams to force the pressure-bars against the door, combined and operating in the manner substantially as specified. 55

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses. 60

PATRICK F. DUNDON.

Witnesses:

P. W. J. LANDER,  
ALFRED A. ENQUIST.



[Endorsed]: No. 15,327. In U. S. Circuit Court, Northern District of California. P. F. Dundon vs. L. A. Pedersen. Complots. Exhibit "A." H. M. Wright, Examiner.

Filed Feb. 20, 1913. W. B. Maling Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 2462. U. S. Circuit Court of Appeals for the Ninth Circuit. Complainant's Exhibit "A." Received Aug. 12, 1914. F. D. Monckton, Clerk.

**[Defendant's Exhibit No. 3.]**

[Endorsed]: No. 15,327. In U. S. District Court, Northern District of California, 2d Div. P. F. Dundon vs. L. A. Pedersen. Defts. Exhibit 3. H. M. Wright, Examiner.

Filed Feb. 20, 1913. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 2462. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendant's Exhibit 3. Received Aug. 12, 1914. F. D. Monckton, Clerk.

(No Model.)

P F DUNDON.

DISCHARGE DOOR FOR STEAM DIGESTERS AND RETORTS.

No. 418,867.

Patented Jan. 7, 1890.

FIG. 1.

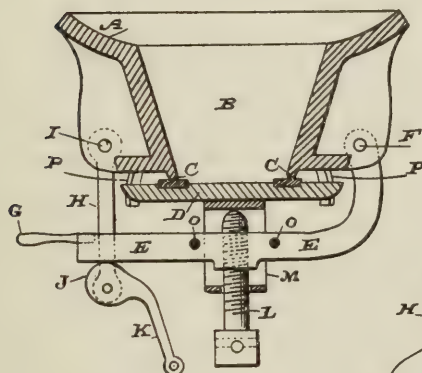


FIG. 3.

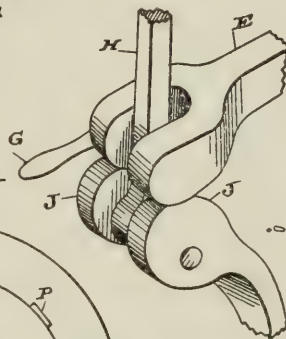
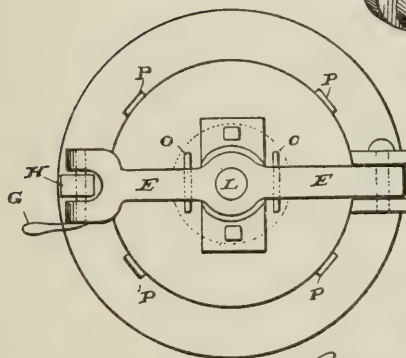


FIG. 2.



Witnesses,  
Geo H Strong  
J H Strong

Inventor,  
Patrick F. Dundon  
By Dancy & Co  
attos

## UNITED STATES PATENT OFFICE.

PATRICK FRANCIS DUNDON, OF SAN FRANCISCO, CALIFORNIA.

## DISCHARGE-DOOR FOR STEAM DIGESTERS AND RETORTS.

SPECIFICATION forming part of Letters Patent No. 418,867, dated January 7, 1890.

Application filed August 21, 1889. Serial No. 321,509. (No model.)

*To all whom it may concern:*

Be it known that I, PATRICK FRANCIS DUNDON, of the city and county of San Francisco, State of California, have invented an Improvement in Discharge-Doors for Steam Digesters and Retorts; and I hereby declare the following to be a full, clear, and exact description of the same.

My invention relates to a drop bottom or door for discharging the contents of digesters or steam-tanks which are used for rendering lard, tallow, and other like matters.

It consists of a door or bottom suitably fixed to the bottom of the digester, a lever-arm, and a supplemental eccentric-lever for locking the same and the door when closed, and a screw which acts against the door to produce any desired compression upon it after the lever is locked in place, together with certain details of construction.

Referring to the accompanying drawings for a more complete explanation of my invention, Figure 1 is a view showing a section of the bottom of the tank or digester with the drop bottom or door, the lever, eccentric, and screw by which it is held in place. Fig. 2 is a bottom view of the same. Fig. 3 is a perspective view of a part of the lever, link, and eccentric.

The tank or digester may be made in any suitable or desirable shape to suit the work to be done, the bottom being preferably slightly depressed or concave, as shown at A, and terminating in a conical discharge-opening B. Around the bottom of this opening is a suitably-shaped projecting bead C, against which the door or bottom D is fitted to close. A groove or channel is cut in this bottom corresponding with the projecting bead C, and within this is fitted a gasket of lead or other suitable soft material, which may be melted in, and the upper surface afterward faced off so as to make a joint with the projecting bead when the door is closed against it.

E is a curved arm or bar, hinged at one side to the bottom of the digester, as shown at F, and curving from this point downward below the door D and extending straight across beneath said door, being provided at its outer end with a suitable handle G, by which to move it.

It is a link hinged to the opposite side of

the digester, as shown at I, and having its lower end adapted to receive an eccentric J, which is pivoted to the link, or, if preferred, between the two straps H, which may be used in place of the single one. The eccentric J has an arm or extension K, which serves as a lever by which to turn it. The link H, swinging on its pivot I, is swung beneath the lever-arm E after the latter has been brought up into position beneath the door D. Through the center of the arm E extends a screw L, the point of which is adapted to press against the central portion of the door D, and this screw holds the door in place when the arm E has been brought up to the proper position, so that the link H is swung beneath it. The arm K of the eccentric J is turned so as to present the lowest portion of the eccentric beneath the arm E, and after the link H is in place the lever K is turned so as to cause the eccentric to act upon the arm E and force it upward, so that acting upon the bottom D it will force the latter into close contact with the bottom of the tank or digester. This bottom may be forced as tightly against the bead C as may be desired by turning the screw L, after the bar E has been locked in place by the eccentric J, thus providing a simple and rapid means for closing and locking the bottom of the digester.

When the work has been completed within the digester and it is necessary to discharge it, this is effected without loosening the screw L or any necessity of going beneath the digester by simply drawing the lever-arm K backward, so that the eccentric will be turned and release the bar E, the eccentric being slipped away so as to allow the bar E and the drop-bottom D to fall away, thus allowing the contents of the digester to be discharged.

The door D is secured to the bar E by means of a bracket M, which is bolted to the door and extends down around the bar E, as shown, the screw L passing through an opening in the bracket and through the bar E, as above described, so that the whole may drop and may be lifted together without being separated from each other. Pins O prevent the bracket and door from moving out of place, and guides P, projecting down from the bottom flange, keep the door in the proper position when being closed.



Having thus described my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. The digester or tank having the conical or tapering discharge with the projecting bead, in combination with the door and gasket fitting against the said bead, a lever-arm hinged to one side of the digester, extending across and beneath the door, and having a screw passing through its center so as to bear against the door, the swinging link, and the locking-eccentric, substantially as described.

2. A digester or tank having a conical discharge and projecting bead, and the door having a gasket and adapted to fit against said bead so as to form a tight joint, in combination with an arm or lever hinged to one side of the digester, extending across beneath

it, a screw passing through an arm so as to bear against the center of the door, and a yoke or bracket whereby the door is loosely connected with the arm, a swinging link attached to the opposite side of the digester, and an eccentric journaled in said link and adapted to swing beneath the front end of the lever-arm, said eccentric having an arm or extension whereby it may be turned so as to lock or release the lever-arm and the door when closed, substantially as described.

In witness whereof I have hereunto set my hand.

PATRICK FRANCIS DUNDON.

Witnesses:

CHAS. D. WHEAT,

S. H. NOURSE.

**[Defendant's Exhibit No. 4.]**

[Endorsed]: No. 15,327. In U. S. District Court, Northern District of California, 2d Div. P. F. Dundon vs. L. A. Pedersen. Defts. Exhibit 4. H. M. Wright, Examiner.

Filed Feb. 20, 1913. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 2462. U. S. Circuit Court of Appeals for the Ninth Circuit. Defendant's Exhibit 4. Received Aug. 12, 1914. F. D. Monckton, Clerk.

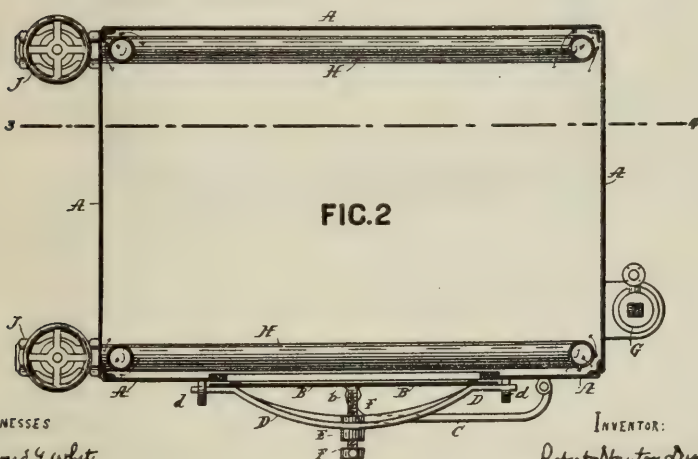
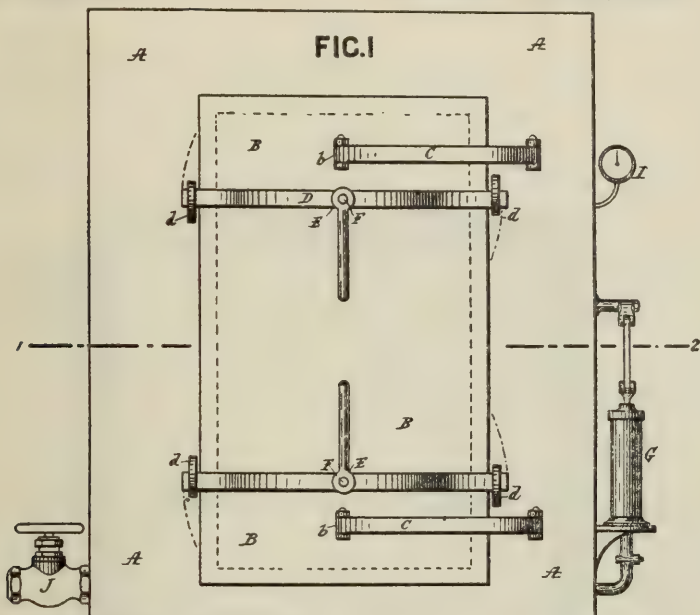
(No Model.)

2 Sheets—Sheet 1.

R. S. DIXON  
VACUUM PRESERVING APPARATUS.

No. 439,125.

Patented Oct. 28, 1890.



WITNESSES

Howard & White  
Holebrook

INVENTOR:

Robert Stanton Dixon  
By *Richardson*  
Attorneys

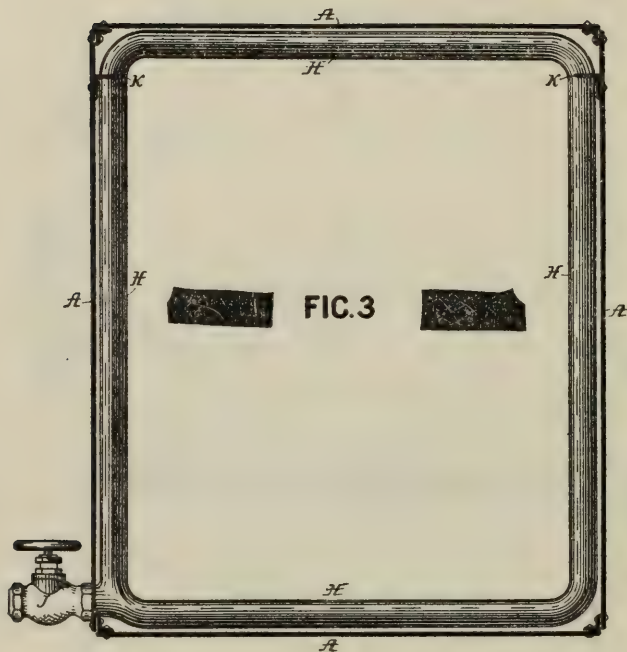
(No Model.)

2 Sheets—Sheet 2.

R. S. DIXON.  
VACUUM PRESERVING APPARATUS.

No. 439,125.

Patented Oct. 28, 1890.



WITNESSES:

Howard L. White  
H. L. White

INVENTOR:

Robert Stratton Dixon

By

ATTORNEYS

Richard L. Dixon  
+



## UNITED STATES PATENT OFFICE.

ROBERT S. DIXON, OF SYDNEY, NEW SOUTH WALES.

## VACUUM PRESERVING APPARATUS.

SPECIFICATION forming part of Letters Patent No. 439,125, dated October 23, 1890.

Application filed September 16, 1889. Serial No. 324,095. (No model.)

*To all whom it may concern:*

Be it known that I, ROBERT STANTON DIXON, a subject of the Queen of Great Britain, and a resident of Sydney, in the Colony of New South Wales, Australia, have invented certain Improvements in Vacuum Preserving Apparatus, of which the following is a specification.

In any convenient position and as an attachment to the air-chamber is placed an air-pump of suitable dimensions and form. Within the air-chamber and installed, preferably, in corners and angles are one or more perforated air-tubes, the perforations of which are directed toward the adjacent angles or sides of the chamber, for reasons to be hereinafter explained. These perforated air-tubes communicate with the outer atmosphere by means of high-pressure induction cocks or valves.

The air-chamber may be constructed of any capacity, varying from two cubic feet for the use of private families to five hundred cubic feet for wholesale dealers. It is considered advisable not to construct the chamber of a greater capacity than five hundred cubic feet; but were suitable exhausting appliances available there is no reason why the capacity of the chamber should not be increased.

In chambers of the dimensions of an ordinary meat-safe angle-irons (the webs of which are turned inward) are riveted to the sides of the air-chamber, so as to form supports for shelves or trays that will carry the perishable contents of the chamber. If, on the other hand, the dimensions of the chamber are such that the chamber shall be capable of containing carcasses, then the angle-irons should be riveted to the sides of the chamber, but near the roof or ceiling, so as to afford supports for the cross-beams upon which the carcasses are hung. On the chamber being filled with the articles to be preserved the door is closed and screwed up or otherwise fixed until it forms a hermetically-closed joint. The air-pump is then worked by the attendant until vacuum-gage (that is fixed outside the wall of the chamber) indicates that the required vacuum is obtained. When it is desired to draw the contents of the safe, one or more of the induction-valves are slightly opened.

The outer air will then rush with force into the internal perforated air-tubes and be projected toward the angles or sides of the chamber, where the force of the current of air will be broken and the air distributed more evenly throughout the chamber. 55

In the accompanying drawings, Figure 1 is a front elevation of the chamber, showing the arrangement of the door-fastenings, hinges, air-pump, vacuum-gage, and induction-valves. Fig. 2 is a transverse section on the line 1 2 of Fig. 1, while Fig. 3 is a vertical section on the line 3 4 of Fig. 2.

A A are the outer walls of the air-chamber. 65

B is the door, which is swung in the center at *b* on doubly-articulated hinges C. This arrangement of hinge is devised for the purpose of enabling the door B to be closed square on its seat. The door, the seat, or both should be packed or lined in any convenient and efficient manner, so as to render the joint thus formed perfectly air-tight. The door is screwed up tight on its seat, preferably by means of one or more curved bars or bows D, the ends of which take under lugs *d d*, secured to the front wall of the chamber outside the door-seat. (See Figs. 1 and 2.) At the center of the curved bar or bow D is a tapped boss E, through which passes a tightening-screw F, the point of which bears against the center of the door. As the screw F is screwed down the bow E is forced outward, pressing against the lugs *d*, while the door B is forced inward tight against its seat. 85

The air-pump G is shown in the drawings, Figs. 1 and 2, at the right-hand side of the air-chamber, and may be of any construction found to be the best adapted for the purpose. The high-pressure induction valves or cocks J may be seen in the drawings placed on the opposite side of the chamber to the air-pump. 90

In Figs. 2 and 3 may be seen the arrangement of internal perforated air-tubes H, which are intended to distribute the air that is admitted to the interior of the chamber through the induction valves or cocks J. The perforations *j* are turned outward toward the walls or angles of the chamber, against which the air-tubes may be placed, thus causing the strength of the current of air as it rushes from the tubes into the chamber to be broken 100

against the sides and angles of the chamber and be thus more evenly distributed throughout.

I is the vacuum-gage that may be placed  
5 in a convenient position near the air-pump G.  
(See Fig. 1.)

In Fig. 3 may be seen the angle-irons K,  
riveted to the walls of the chamber for the  
purpose of supporting the cross-beams upon  
10 which the carcasses are hung.

In very large chambers, where the atmospheric pressure would be very great, the walls of the chamber may be strengthened either internally or externally by stays.

15 Having now particularly described and ascertained the nature of my said invention and in what manner the same is to be performed, I declare that what I claim is—

The combination, with an air-tight chamber having a hermetically-closed door, of a system of perforated internal air-tubes, the perforations of which are turned toward the angles or sides of the chamber, the said internal air-tubes being in communication with the outer atmosphere by means of high-pressure cocks or valves, as specified, as illustrated in the drawings, and for the purposes herein set forth.

In witness whereof I hereunto set my hand in presence of two witnesses.

ROBERT S. DIXON.

Witnesses:

MANFIELD NEWTON,  
*Civil Engineer.*  
G. W. GRIFFIN,  
*U. S. Consul.*

**[Exhibit Patent Drawings and Specification of  
Patent No. 375,903.]**

[Endorsed]: No. 2462. U. S. Circuit Court of Appeals for the Ninth Circuit. Exhibit Patent Drawings and Specification of Patent No. 375,903, Jan. 3, 1888. Peter Unfried. Received Aug. 12, 1914. F. D. Monckton, Clerk.

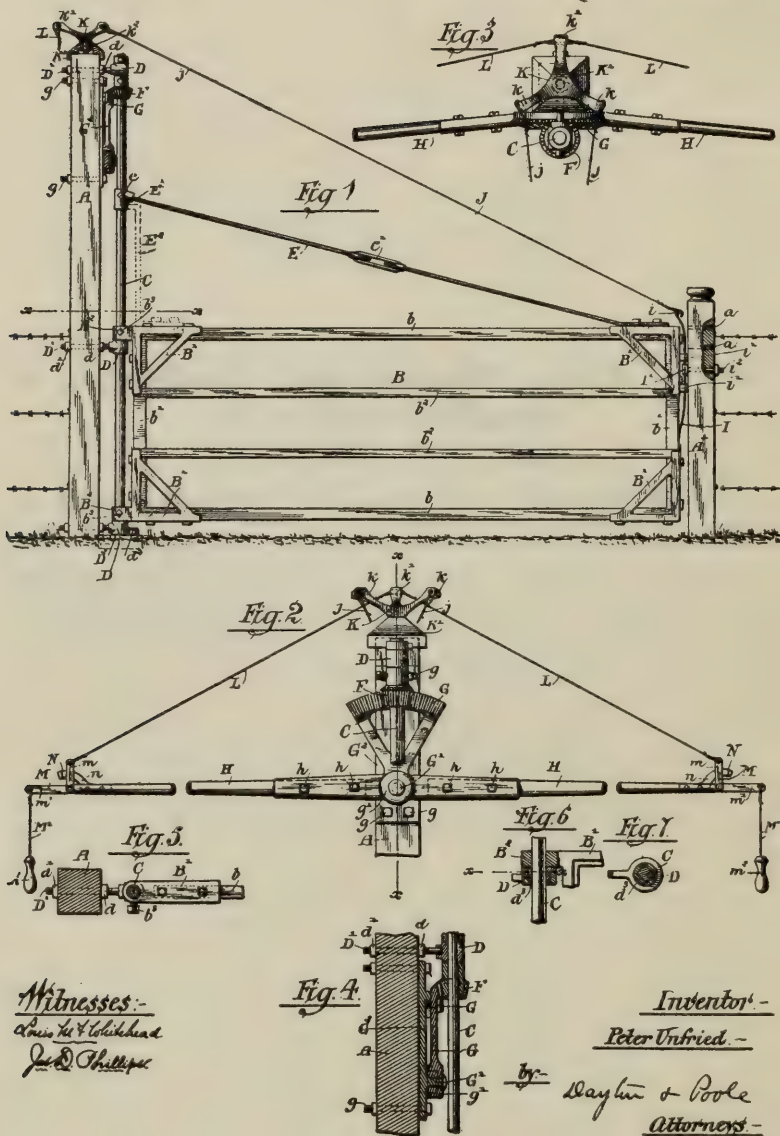
(No Model.)

P. UNFRIED.

GATE.

No. 375,903.

Patented Jan. 3, 1888.





## UNITED STATES PATENT OFFICE.

PETER UNFRIED, OF CHICAGO, ILLINOIS.

## GATE.

SPECIFICATION forming part of Letters Patent No. 375,903, dated January 3, 1888.

Application filed January 24, 1887. Serial No. 225,211. (No model.)

*To all whom it may concern:*

Be it known that I, PETER UNFRIED, of Chicago, in the county of Cook and State of Illinois, have invented certain new and useful  
 5 Improvements in Gates; and I do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings, and to the letters of reference marked thereon, which form a  
 10 part of this specification.

This invention relates to a novel actuating device for farm and other gates; and it consists in the matters hereinafter described, and pointed out in the appended claim.

15 In the accompanying drawings, illustrating my invention, Figure 1 is a side view of a gate embodying my invention. Fig. 2 is a detail elevation of the main parts of the actuating devices upon the gate-post. Fig. 3 is a detail  
 20 plan view of the parts of the gate actuating devices shown in Fig. 2. Fig. 4 is a detail section taken upon line *xx* of Fig. 2. Fig. 5 is a detail plan view taken upon line *xx* of Fig. 1. Fig. 6 is a view illustrating a modified  
 25 form of the bar supporting the gate and devices for pivotally sustaining said bar. Fig. 7 is a horizontal section taken upon line *xx* of Fig. 6.

As shown in the said drawings, A A' are the  
 30 gate-posts, and B the gate. For the general purposes of my invention the said gate may be made in any desired or preferred manner; but as herein shown it consists of longitudinal  
 35 top and bottom rails *b b*, vertical end rails, *b' b'*, connected at the corners of the gate by iron corner-pieces B', and intermediate rails, *b' b'*. The gate-post A, to which the gate is hinged, is made considerably higher than the  
 40 post A' at the free edge of the gate, and at the side of said post A adjacent to the gate is pivotally supported a vertical shaft, C, to which the gate is rigidly attached, and which  
 45 turns in its bearings upon the post as the gate is swung. Pivotal connection between the said shaft C and the post is desirably formed  
 by means of bearings D, consisting, as shown, of metal blocks vertically apertured to afford  
 50 suitable horizontal apertures in the post, the

bearings being held in place by means of nuts *d d'*, placed upon said threaded shanks D' at opposite sides of the post. By moving the nuts *d d'* upon said shanks the bearings D D' may obviously be moved horizontally toward  
 55 and from the post, thereby enabling the adjustment of the bearings into alignment with the shaft to be easily accomplished, while at the same time affording a cheap and simple means of attaching the bearings to the post.  
 60 The lower bearing D, or that adjacent to the ground, is preferably made in the form of a stop to hold the shaft C from vertical movement, and said bearing is preferably provided with a horizontal flange or projection, *d'*, forming  
 65 a broad surface adapted to rest upon a block or stone, D', which may be desirably placed beneath it to take part of the strain from the shanks D' of the bearings and from the post.

The gate is attached to the shaft C by means of lugs or projections B', rigidly attached to the gate and apertured for the passage of the  
 70 said shaft. In the particular construction herein illustrated the said lugs or projections B' are cast upon the metal corner-pieces B' of the gate, and, as illustrated in Figs. 1  
 75 and 5, set-screws *b'* are inserted through said lugs or projections B', for the purpose of holding the shaft from turning in the said lugs or  
 80 projections.

E is an inclined tie-rod attached to the gate at or near the free end of the latter and connected with the shaft C at a point considerably above the top of the gate. The means  
 85 for attaching the tie-rod to the shaft herein shown consists of a sleeve, E', surrounding the shaft and provided with a set-screw, *e*, whereby the sleeve may be firmly clamped upon the  
 90 said shaft. The said tie-rod E obviously serves to hold the free end of the gate from sinking or sagging, and may, if desired, be provided with a turn-buckle, *e'*, or other means whereby its length may be adjusted.

At or near the upper end of the shaft C is  
 95 affixed a toothed pinion, F, which intermeshes with the gear-segment G, which is pivoted upon a stud, G', secured to the post A below the pinion, said segment having attached to it, at or near its pivotal point, horizontally-  
 100

arranged arms or levers H H, to the outer ends of which power may be applied for actuating the gear-segment G, and thereby turning the pinion F and the shaft C for opening and closing the gate. The stud G' is preferably formed upon or attached to a plate, G<sup>2</sup>, which is bolted to the vertical face of the post by bolts *g g* in the manner shown, and the segment G is desirably provided with a hub, *g'*, to which are attached integral metal arms *h h*, secured by bolts or otherwise to the main parts of the levers H. H, desirably made in the instance illustrated of wood. The said arms H will be made of considerable length, and will extend to a point convenient to be reached by a person riding or walking along the roadway leading through the gate, and the devices described will thus afford a simple and convenient means for actuating the gate.

The construction described, wherein the gate is sustained by a shaft, C, having bearings on the gate-post in the manner described, is not only advantageous as a means of communicating motion to the gate from the gear segment and pinion, but said shaft also affords an advantageous means of supporting the gate, having, among other advantages, that of enabling the gate to be readily lifted above its normal position and there sustained in case its movement in its usual position is prevented by snow. To accomplish the shifting of the gate vertically it is only necessary to loosen the set-screws *b' b'*, when the projections B' can be slid upwardly upon the shaft and the set-screws then tightened to hold the gate in its elevated position. In shifting the gate in this manner the sleeve E', to which the tension rod E is attached, will of course be moved upwardly the same distance that the gate is raised. If desired, for convenience of manipulation, the said sleeve E' may be rigidly connected to the gate by means of a vertical brace, E<sup>2</sup>, (indicated in dotted lines in Fig. 1,) so that the said sleeve will always be held at the proper relative distance from the top of the gate.

In Figs. 6 and 7 I have shown a construction of the vertical shaft C wherein the latter is made square in cross-sectional form and the lugs or projections B' B' upon the gate are of similar shape, so that the gate will be held from turning upon the shaft independently of the employment of set-screws *b' b'* for this purpose. When the shaft is made square, suitable bearings may be afforded for it in the sleeves D by means of thimbles *d'*, provided with square apertures to receive the rod and having cylindric exterior surfaces to enter corresponding shaped bearing-apertures in the said bearings D, and flanges *d'* to rest upon the top of said bearings D, as clearly illustrated in said Figs. 6 and 7.

It is obviously desirable in a gate adapted for actuation by a device of the character described that means should be provided for disengaging the latch of the gate, so that the latter may be moved from the point at which the gate is opened. I have herein shown auto-

matically-operating latch-actuating devices, which are constructed as follows:

I is the latch, herein shown as consisting of a vertically-arranged bar flexibly connected at its lower end with the free edge of the gate and provided at its upper end with a loop, *i*, to which is attached an actuating cord, chain, or wire, J. The said latch I is desirably held or guided between two guide-loops, *i' i'*, upon the gate, and is adapted to engage a notched keeper, I', attached to the post A'. In connection with a gate adapted for vertical adjustment in the manner above described, the keeper I' will preferably be attached to the gate-post by means of a threaded shank or bolt, *i'*, adapted for engagement with either one of a number of apertures, *a a*, in the post. The wire J is forked or divided into two branches or strands, *j j*, in its part adjacent to the post A, and upon the upper end of said post is mounted a pivoted frame or casting, K, having two arms, *k k*, to which the wires *j j* are attached, and a third arm, *k'*, to which are attached two wires, L L, extending to points adjacent to the outer end of the levers H H. The frame or casting K is mounted to rotate about a vertical axis, the bearing, or support for said frame or casting herein shown consisting of a pin, *k'*, upon the lower part of the casting, extending through and having bearing in a metal cap, K', secured upon the top of the post A, as clearly shown in the drawings. The arms *k k*, to which the wires *j j* are attached, extend laterally from the pivotal axis of the casting K, so that when the casting is rotated in either direction one of the wires *j j* will be drawn in the direction toward the post, with the effect of drawing the latch backward and releasing the latter from the keeper I'. The third arm, *k'*, of the casting K is located midway between the arms *k k* and extends toward the rear of the post, so that when force is applied to either of the wires L L attached thereto the frame K will be swung about its pivot and the latch thereby released, in the manner above described. Any convenient means may be applied at the outer end of the lever H to facilitate the manipulation of the wires L L for the purpose of releasing the latch. One convenient device for this purpose is herein shown, which consists of a bell-crank lever, M, pivoted to the free or outer end of the lever H, and having an upwardly-extending arm, *m*, to which the ends of the wire L are attached, and a horizontal arm, *m'*, to the free end of which is attached a string or wire, M', having at its lower end a handle, *m''*, which may be grasped for the purpose of drawing downwardly upon the arm M' of the bell-crank lever, thereby actuating the wire L for the purpose of moving the latch.

N is a stop rigidly fixed to the lever H for the purpose of limiting the movement of the bell-crank lever M, said stop being, as shown, attached to the said lever by means of a curved arm, *n*. The gear-segment G is actuated for opening the gate by pulling downwardly upon

375,903

3

the free end of one of the levers H, so that by giving an oscillatory movement to the bell-crank lever M, in the manner shown, the latch may be disengaged and the gate opened by a  
5 continuous downward pull upon the handle M<sup>2</sup> or upon the outer end of the arm m' of the bell-crank lever, it being entirely obvious that when the arms H H are horizontal, as shown in Fig. 2, a downward pull upon the said handle m' will first swing the bell crank lever about its pivot, and thereby draw upon the wire L,  
10 so as to open the gate-latch, and that as soon as the said lever strikes the stop N a further downward pull upon the handle will move the  
15 lever H downward, and thereby cause the opening of the gate.

I claim as my invention—

The combination, with a gate-post or other support and a gate, of a shaft, C, bearings upon the said post or support for said shaft, and an  
20 inclined tie-rod connecting the free part or end of the gate with the said shaft, the said gate and the tie-rod having sliding connection with the shaft, whereby the gate and tie-rod may be raised and lowered, substantially as described. 25

In testimony that I claim the foregoing as my invention I affix my signature in presence of two witnesses.

PETER UNFRIED.

Witnesses:

C. CLARENCE POOLE,  
CHARLES T. LORING.





No. 2462

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IN THE  
**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT.

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**L. A. PEDERSEN,**

*vs.*

***Defendant-Appellant,***

**PATRICK F. DUNDON,**

***Plaintiff-Appellee.***

---

**Brief for Defendant-Appellant.**

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WILLIAM K. WHITE,  
For Defendant-Appellant.

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THE JAMES H. BARRY CO.

**Filed**

NOV 2 - 1914

F. D. Monckton,  
Clerk.



IN THE  
**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT.

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L. A. PEDERSEN,	}	No. 2462.
vs.		
PATRICK F. DUNDON,		
<i>Defendant-Appellant,</i> <i>Plaintiff-Appellee.</i>		

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BRIEF ON BEHALF OF DEFENDANT-APPELLANT.

This case comes before this Court on an appeal from the interlocutory decree of the United States District Court for the Northern District of California.

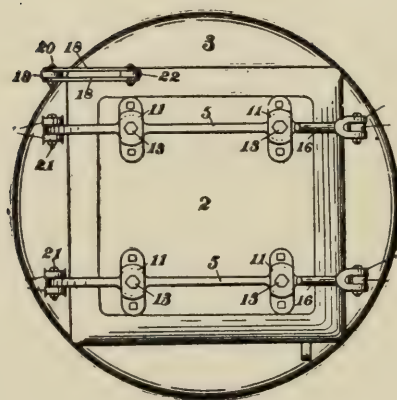
In and by said decree claim 3 of United States letters patent No. 653,503 issued on July 10, 1900, to Patrick Dundon for "Door for Digesters" is adjudged valid and infringed.

The parties stipulated that this appeal be heard upon the agreed statement of the case found on page 4 of the record.

The case presents two important questions for determination, to wit:

1. Can a functional limitation in a claim be ignored?

# DUNDON'S DEVICE





2. Is a plaintiff entitled to a recovery of *both* damages and profits?

On the opposite page appears a reproduction of figure 1 of the Dundon patent disclosing a front elevation of the patented door and the frame upon which it is mounted. Regarding his invention, Mr. Dundon, in his patent, says:

"My invention relates to doors for hermetically sealing retorts, digesters or other vessels that sustain internal pressure and to certain improvements in devices for *hinging*, closing, and securely sealing such doors . . .

"My present improvements consist in two or more bars that span the doors, bearing usually at four points thereon, so selected as to equalize the pressure around the sealed joints and utilize the full strength of the door itself in resisting the compressing strain: also, *consists in the manner of hinging the doors by means of the bearing bars* and a compensating link pivoted coincident therewith, and in other structural devices that will be particularly pointed out and explained by the aid of the drawings herewith and forming a part of this specification.

*"The main objects of my invention are celerity of action in opening and closing such doors, security against leaks, and to utilize the bearing-bars as hinges on which the door may swing and thus dispense with independent pivoting devices, avoiding the cost and complication of the latter.*

"In sealing doors of the class here illustrated, especially for retorts that are frequently opened and closed, as in treating food, *it is an object to quickly open and close the doors*, also to produce

a close joint *without the use of numerous independent clamping screws.*"

It will be noted that the patentee expressly states that the *main objects* of his invention are "*celerity of action in opening and closing such doors . . . and to utilize the bearing-bars as hinges on which the door may swing and thus dispense with independent pivoting devices, avoiding the cost and complication of the latter.*"

By referring to said Fig. 1, it will be seen that the door 2 is mounted on the pressing-bars 5 curved at the ends 6 to fit between the lugs 7 on the door-frame 3. These pressing-bars, therefore, form the hinges for the door and on them the door is supported and swung when being opened and closed. The radius links 18 form an additional hinge and support for the door and they are pivoted on the same axial line as the pressing-bars 5 and *hold the door in adjustment on such bars.* In Fig. II of the Dundon patent is shown a top view of the door and other devices mentioned.

Having emphasized the objects of his invention and having, in the drawings and specification of the patent, clearly disclosed the means for attaining said objects, the patentee claims said means as follows:

"3. In a hermetically-closing door, pressing bars to force the door upon its seat, bearing at four or more points thereon, *forming also hinges for the door,* and in combination therewith the radius-links 18 pivoted *in the same axial line as the press-*

*ing bars and holding the door in adjustment thereon, substantially as specified."*

The law presumes all of the elements of said claim to be old. The invention covered by the claim necessarily resides in the new combination of such old elements.

"The point to be emphasized is that the law looks not at the elements or factors of an invented combination as a subject for a patent, but only to the combination itself as a unit distinct from its parts."

*Yesbera v. Hardesty Co.*, 166 Fed., 125.

Therefore, the combination of claim 3 must be considered as a "unit distinct from its parts." In comparing such "unit" with another combination to determine the question of identity between them, no single element of such "unit" and no functional limitation, respecting any such element, can be ignored. In the lower court, it was necessary for opposing counsel, in arguing the question of infringement, to contend that the functional limitations of claim 3 should be ignored because said functional limitations differentiated the defendant's device from that of plaintiff. To clearly show the limitations of claim 3 which differentiate defendant's device therefrom, we shall now set forth said claim with such limitations enclosed in brackets. If such limitations are not ignored it is ad-

mitted by opposing counsel that there is no infringement.

“3. In a hermetically-closing door, pressing-bars to force the door upon its seat, bearing at four or more points thereon, (*forming also hinges for the door,*) and in combination therewith the radius-link(s) 18 pivoted (*in the same axial line as the pressing-bars and holding the door in adjustment thereon*), substantially as specified.”

The first limitation is expressed in the words “*forming also hinges for the door.*” This is a functional limitation and limits the combination to one in which the pressing-bars not only perform the function of pressing-bars *but also perform the additional function of hinges for the door.* There are a number of decisions to the effect that a *functional limitation* can not be ignored or, in other words, be treated as merely pointing out the preferable form of embodiment and we know of no decisions in direct conflict therewith.

In *Thomson Meter Co. v. National Meter Co.*, 106 Fed., 530, it is said by Judge Townsend:

“ . . . As a matter of law it is settled that such a specific statement of function thus inserted in a claim as material cannot be disregarded.”

In this case, there can be no question as to the intention of Dundon to make material the feature of the pressing-bars performing the additional function of hinges. In the specification of the patent, he expressly states: “My present improvements . . .



also, consists *in the manner of hinging the doors by means of the bearing-bars, . . .*."

"The main objects of my invention are celerity of action in opening and closing such doors . . . and *to utilize the bearing-bars as hinges on which the door may swing and thus dispense with independent pivoting devices avoiding the cost and complication of the latter.*"

Having so expressly and emphatically stated in his patent that his invention, in part, consists in so utilizing the pressing-bars as hinges and that one of the main objects of his invention was to so utilize them, we respectfully submit that the patentee-plaintiff is estopped from contending that such utilization of the pressing-bars as hinges is not material and that the words of claim 3, expressly limiting the combination to one in which the pressing-bars are so utilized as hinges, should be treated merely as words of description pointing out the preferable form of embodiment.

On this point, the words of the Circuit Court of Appeals for the Eighth Circuit in the case of *O. H. Jewell Filter Co. v. Jackson*, 140 Fed., 347, are pertinent:

"The truth is that the patentees and the appellant, their successor in interest, are estopped by the declarations in the patent which have been cited, from claiming a monopoly of any invention which does not include the specific form of lateral arm which they described. The statute requires the inventor to point out and distinctly claim his inven-

tion. When he has done this, he has thereby disclaimed and dedicated to the public all other combinations and improvements apparent from his specifications and claims that are not evasions of the improvement he points out. The patent is a notice to all the world, not only of the improvements claimed, but of those that are dedicated to the public, and the patentee is justly estopped from subsequently claiming the latter. Here the patentees by their specification entered a distinct disclaimer of a combination of the straight lateral arm, with the other elements specified in their claim, and made a clear statement that their invention consisted of two series of finger bars movable in different planes. It was too late for them to recall and modify these statements after the defendant, in reliance upon them, had constructed and put in operation a combination with other elements of an arm which does not and cannot have the two series of finger bars moving in different planes."

Mr. Dundon, having expressly declared that his improvements, in part, consist in the manner of hinging the doors by means of the bearing bars and that one of the main objects of his invention was to so utilize them, it was too late for him to recall and modify such statements after the defendant, in reliance upon them, had constructed and put into use a combination in which the pressing-bars did not perform the function of hinges.

In the case of *Swain v. Holyoke Co.*, 111 Fed., 411, Judge Putnam said:

"To ignore the express functional limitation of

the claim, viz., 'arms adapted to engage with the sides of the hole,' would be to create a new claim, not interpret the one granted. *Anthony Co. v. Genert*, 108 Fed., 396."

In the *Anthony* case, mentioned by Judge Putnam, it is said by the Court of Appeals for the Third Circuit:

"To ignore the express functional limitations of the claim, viz.: 'whereby they are enabled to fold back into the case side by side,' would be to create a new claim; not interpret the one granted. The court below rightly held there was no infringement."

In the *Thomson Meter Co. case*, *supra*, it is also said by Judge Townsend:

"In *Computing Scale Co. v. Keystone Store-Service Co.* (C. C.), 88 Fed., 788, the claim was for a certain combination 'whereby the pivotal supports of the beam and rod, e, may be brought into alignment, as and for the purpose described.' The Court held that this covered only such a combination so constructed that the supports might be brought into alignment as and for the purpose described and said:

" 'The insertion of these words meant something, and they must be given due weight. The construction we adopt accords them meaning. That of complainant ignores their presence, and makes non-essential what the patentee and the office have deemed material and essential.' "

"In *Renwick v. Pond*, 20 Fed. Cas., 536, Judge Blatchford said that where a combination was claimed, so arranged as to effect a certain engage-

ment, 'if the combination exists, yet, if it is not so arranged as to effect such engagement, there is no infringement.' See, also, *Lovell v. Johnson*, 33 C. C. A., 426, 91 Fed., 160; *J. L. Owens Co. v. Bradley* (C. C.), 83 Fed., 482; *Roemer v. Peddie*, 26 C. C. A., 440, 81 Fed., 380; *Whitaker Cement Co. v. Huntington Dry Pulverizer Co.*, 37 C. C. A., 151, 95 Fed., 471.

In view of the foregoing authorities and the obvious fact that, in his patent, Dundon emphatically made the feature of the pressing-bars forming hinges a material feature and not merely a preferable form of embodiment, we respectfully submit that a device, in which the pressing-bars do not operate as hinges, is not an infringement. If said functional limitation be ignored and the claim construed as covering such a device, then the claim will cover a device which cannot, according to the patentee himself, attain one of the "*main objects of the invention.*" Such being true, how can it successfully be contended that such a device is substantially identical with said invention? Defendant's structure is such a device. In it, the pressing-bars do not operate as hinges; they are entirely disconnected at both ends from the walls of the retort before the door is swung open upon its hinges, which operate independently of the pressing-bars. These facts are not disputed and are apparent from an inspection of the cut of the defendant's device appearing on page 5 of the record.

In the case of *Kings County Raisin & Fruit Co. v.*



*United States Consolidated Seeded Raisin Co.*, 182 Fed., 59, this Court, speaking through Judge Gilbert, said:

"It does not necessarily follow, from the fact that the claim describes a specific form of construction, that the inventor shall be limited to that form. All depends on his *expressed intention*, and the scope of the actual invention which he has made. If his improvement is but a narrow one, *or if he has used language such as clearly to show his intention to limit his invention to a particular form described*, then he is held to the language of his claim, and limited to that specific form. But if his is a pioneer invention, or one of such merit as to be entitled to a liberal construction, the claim will not be thus limited, even if couched in specific language, *unless the inventor has also shown his positive intention to relinquish to the public all other forms in which his invention might be embodied.*"

It is to be noted that, in the above case, the question of "functional limitations" in a claim was not involved. According to the authorities cited by us, limitations of that particular character are not viewed in the same way as ordinary limitations, which are generally treated as mere *words of description* pointing out the preferable form of embodiment.

However, the Kings County Co. decision is directly in point in regard to our contention that the language used in the Dundon specification is "*such as clearly to show his intention to limit his invention to a particular form described*" in said specification. He expressly states that one of the *main objects of his invention* is

the utilization of the pressing-bars as hinges for the door. He also expressly states that one of the *main objects of his invention* is "*celerity of action in opening and closing such doors.*" Such celerity of action is due to such utilization of the pressing-bars as hinges. By referring to the cut of defendant's device, it will be seen that, in order to open the door therein, it is first necessary to unscrew the nuts at each end of the pressing-bar. Each of these nuts is provided with a handle and there are four such nuts to be so manipulated and four screws to be thrown back out of engagement with the respective pressing-bars, before the door can be swung open on its hinges. In the Dundon device, by reason of the pressing-bars operating as hinges, it is only necessary to manipulate the holding means at one end of each pressing-bar in order to open the door. Dundon, therefore, attains one of the *main objects of his invention*, to wit: "*celerity of action in opening and closing*" the door, by using the pressing-bars as hinges, thereby cutting in half the work required to be done in opening the defendant's door. As Dundon also says: "In sealing-doors of the class "here illustrated, especially for retorts that are frequently opened and closed, as in treating food, it is "an object to quickly open and close the doors . . ."

In view of said statements of the patentee, we respectfully submit that he has clearly shown his intention to limit his invention to the particular form shown in the patent drawings and his said intention is also

evidenced by the wording of claim 3, which is expressly limited to a combination in which the pressing-bars form hinges for the door.

The next limitation of claim 3 restricts the combination to one in which more than one link or tie rod is used to keep the door in adjustment on the pressing-bars and keep it from sagging. It will be noted that the word "links" is in the plural, thus calling for at least two links or tie-rods. It is not contended that there is more than one link or tie-rod in defendant's device to keep the door from sagging. It is obvious, therefore, that defendant has dispensed with one of the elements of claim 3 and has substituted nothing in its place. For this reason, it may be contended that defendant's device does not infringe.

"Nothing in the law of patents is better settled than the rule that a claim for a combination is not infringed if any one of the described or specified elements is omitted, without the substitution of anything equivalent thereto."

*American School Furniture Co. v. Sander Co.*,  
113 Fed., 577.

The next limitation of claim 3 is expressed in the words:

" . . . pivoted in the same axial line as the pressing-bars and holding the door in adjustment thereon."

According to this limitation, the links 18 must both

be pivoted in the same axial line in which the pressing-bars are pivoted. By referring to the cut of defendant's device, it will be seen that the pressing bars are not pivoted at all and are not connected to the retort wall in the same axial line in which the single tie-rod is pivoted. It will also be noted that the words "*holding the door in adjustment thereon*" are a functional limitation and restrict the combination to one in which two or more links or tie-rods *hold the door in adjustment on the pressing bars*. In defendant's device, the door is not supported by the pressing-bars but, on the contrary, the door supports the pressing-bars. Therefore, the single tie-rod used by defendant cannot hold the door in adjustment on the pressing-bars which are supported by the door. Such tie-rod or link merely prevents the door from sagging upon its hinges, thus keeping it in adjustment relative to the hinges and *not* relative to the pressing-bars. In fact, such tie-rod is merely a third hinge in defendant's structure.

The use of such a tie-rod is shown in the Unfried patent to be found at page 34 of the record. The tie-rod in this Unfried structure performs the same function as the tie-rod in defendant's structure. In the Unfried patent, it is said on page 1, line 90:

"The said tie-rod E obviously serves to hold the free end of the gate from sinking or sagging . . ."

If claim 3 is construed as broadly covering a link or tie-rod for keeping any kind of a closure for an



opening in adjustment upon its hinges, then we insist said claim is anticipated by the Unfried patent. However, in our opinion, such a broad construction of the claim would be improper and inconsistent with the *expressed intention* of the patentee to limit it to the form shown in the drawings and described in the specification. Furthermore, we submit that the patentee is estopped from contending for any such broad construction.

In view of the fact that the single link or tie-rod in defendant's device does not hold the door in adjustment on the pressing-bars, said device, under the quoted authorities, cannot infringe claim 3 because of such functional limitation expressed in said words "*pivoted in the same axial line as the pressing-bars and holding the door in adjustment thereon.*"

A comparison of Fig. 1 of the Dundon patent with the cut of defendant's device discloses the differences between the two and, according to the expressed limitations of claim 3 and according to the statements of the patentee in his specification, his invention, in part, resides in such differences. Ignore such limitations and the Dundon invention, *as expressly defined by himself*, disappears.

Claim 3 is limited to a door having pressing-bars operating as hinges. The defendant's pressing-bars do not operate as hinges. Claim 3 is limited to a door prevented from sagging by two or more links or tie-rods. The defendant's device has but one link or

tie-rod. Claim 3 is limited to a door in which two or more links or tie-rods are pivoted in the same axial line in which the pressing bars are pivoted. The defendant's pressing-bars are not pivoted at all, because they do not operate as hinges. Claim 3 is limited to a door held in adjustment *on the pressing-bars* by two or more links or tie-rods. In the defendant's device, the door is supported by hinges and is not held in adjustment on the pressing-bars, which in fact are supported by the door instead of supporting the door as in the device of claim 3.

In view of the foregoing, we respectfully submit that the limitations of claim 3 should not be ignored and that the patentee-plaintiff is estopped from contending his invention does not, in part, reside in such limitations. If said limitations are not treated as mere words of description, contrary to the expressed statements of the patentee, there is no infringement.

#### DAMAGES AND PROFITS NOT BOTH RECOVERABLE.

The interlocutory decree contains the following paragraph:

"And it is further ordered, adjudged and decreed, that the complainant do recover of the defendant the profits, gains and advantages which the said defendant has received or made, or which have arisen or accrued to him by the manufacture, use or sale of Doors for Digesters, in violation of claim 3 of said letters patent, and that the complainant do recover the damages resulting from said infringement."

Our contention is that plaintiff is not entitled to the recovery of both damages and profits but is entitled to recover either at his election, depending, of course, whether the amount of damages, proved on the accounting, exceeds the amount of profits proved on the accounting. If our contention be correct, the decree should provide only for the recovery of damages *or* of profits. Under such a form of decree, the plaintiff, on the accounting, would be entitled to prove both damages and profits and to recover the larger of the two amounts so proved. We do not contend the election should be made before the conclusion of the accounting and we are of the opinion that it is good practice for the Master to report an account of both damages and profits, if the proofs warrant such a report.

In section 1154 of *Robinson on Patents*, it is said:

“Damages, as such, were not recoverable in equity cases of infringement until the act of 1870, which conferred upon Circuit Courts the power to award them in addition to the profits. The purpose of this act was to afford the plaintiff adequate compensation for his injury in actions in equity, although the evidence on the accounting might show that the defendant had made no profits, or that the profits which he had received were insufficient to cover the whole loss that the plaintiff had sustained, and thus relieve him from the necessity of discontinuing his equitable proceedings and seeking his redress in damages at law. Construing the act in this spirit, the courts have held that wherever the plaintiff has suffered an injury by the infringement

greater than the amount of profits made by the defendant, whether because the defendant has made no profits or less than a fair profit through his unskilfulness or unwise conduct of his business, or because the wrongs inflicted on the plaintiff lie outside the scope of the mere loss of profits on the patented invention, the plaintiff is entitled to recover *in excess of profits such a sum in damages as, taken with the profits, will give him complete compensation for the injury.*"

The foregoing can be interpreted only as meaning that if the damages exceed the profits, the plaintiff is entitled to recover the full amount of damages suffered.

In the case of *Westinghouse et al. v. New York Air Brake Co. et al.*, 131 Fed., 607, it is said:

"The rule is clear that the profits which the complainant might have gained by supplying such demand are recoverable as damages which it suffered thereby. It is also clear that, if such sum exceeds the profits which the defendants gained, such profits can be enlarged until they equal the complainant's losses, *but that the two amounts cannot be added together and charged up to the defendants.*"

In *Child v. Boston & Fairhaven Iron Works*, 19 Fed., 258, it is said:

"If the plaintiff had found that his damages exceeded the defendant's profits, he might have had the larger sum assessed. *Birdsall v. Coolidge*, 93 U. S., 64."

In *Simpson v. Davis*, 22 Fed., 444, it is said:



"The fourth exception raises the question whether the plaintiffs can, by virtue of section 4919, Rev. St., recover damages resulting from the defendant's infringement of their patent in addition to the profits realized by the defendant. Doubts appear to have existed in regard to the meaning of the provision in section 4919, but I understand the Supreme Court in *Birdsall v. Coolidge*, 93 U. S., 64, to hold the effect of the statute to be this: that when it appears, in a case in equity, that the defendant's profits, derived from the use of the plaintiff's invention, do not amount to so much as the plaintiff's damages arising from the infringement, the court may add to the amount of the defendant's profits, a sum *sufficient to make the amount awarded by the decree equal to the plaintiff's damages*. So the decision referred to is understood in *Child v. Boston and Fairhaven Iron Works*, 19 Fed. Rep., 258.

"Under this construction of the statute the plaintiffs, upon the proofs in this case, may have added to the defendants' profits the sum of \$151.50, making the recovery \$303., which is the amount of the plaintiffs' damages as shown by the proofs."

In *Tilghman v. Proctor*, 125 U. S., 148, it is said:

"The rule in equity of requiring an infringer to account for the gains and profits which he has made from the use of a patented invention, instead of limiting the recovery to the amount of royalties paid to the patentee by third persons, has been constantly upheld under the provision of the patent act of 1870, embodied in the Revised Statutes, which, beside reenacting the grant of general equity jurisdiction in patent cases, further enacts that 'upon a decree being rendered in any such case for an infringement, the complainant shall be entitled to

recover, in addition to the profits to be accounted for by the defendant, the damages the complainant has sustained thereby, and the court shall assess the same or cause the same to be assessed under its direction, and the court shall have the same powers to increase the same in its discretion that are given by this act to increase the damages found by verdicts in actions upon the case'; and thus expressly affirms the defendant's liability to account for profits, as well as authorizes the court sitting in equity to award and treble any damages that the plaintiff has sustained *in excess* of the defendant's profits. Act of July 8, 1870, c. 230, Sec. 16, Stat. 206; Rev. Stat., Sec. 4921; *Birdsall v. Coolidge*, 93 U. S., 64, 69; *Marsh v. Seymour*, 97 U. S., 348; *Root v. Railway Co.*, above cited; *Manufacturing Co. v. Cowing*, 105 U. S., 253; *Garretson v. Clark*, 111 U. S., 120; *Black v. Thorne*, 111 U. S., 122; *Birdsall v. Shaliol*, 121 U. D., 485, 488; *Thomson v. Wooster*, 114 U. S., 104."

In the foregoing quotation, it will be noted that the plaintiff is entitled to recover only the damages *in excess* of the defendant's profits which can only mean, in dollars and cents, that the plaintiff is entitled to recover his full damages and, if he recovers profits, the amount thereof must be subtracted from the amount of the damages and the excess only allowed as damages. Any other construction of the statute would permit a plaintiff, in an action at law, to recover only damages and, in a suit in equity, to recover both the total amount of damages suffered and the total amount of profits received by the defendant. The purpose of the act of 1870 was obviously not to bring about any such

situation. Its purpose, as stated by Robinson, was simply "to afford the plaintiff adequate compensation for his injury in actions in equity, although the evidence on the accounting might show that the defendant had made no profits, or that the profits which he had received were insufficient to cover the whole loss that the plaintiff had sustained . . . ."

In view of the foregoing, we submit that it was error for the lower court to award plaintiff *both* damages and profits.

For the convenience of the Court we annex hereto a copy of Judge Van Fleet's decision herein.

Respectfully submitted.

WILLIAM K. WHITE,  
Solicitor and Counsel for Defendant-Appellant.

*In the District Court of the United States, Northern  
District of California, Second Division.*

Patrick F. Dundon, Complainant, vs. L. A. Pedersen,  
Defendant.—No. 15,327.—In Equity.

FRANCIS M. WRIGHT, for Complainant.

MILLER & WHITE, for Defendant.

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VAN FLEET, District Judge:

This is a bill to enjoin the infringement of a patent—No. 653,503—issued to plaintiff on July 10, 1900, covering “Doors for Digesters,”—a steam-tight door for use on retorts in canneries and other establishments where the processing of the product is by cooking with steam, the successful operation of which requires the introduction of steam of considerable pressure. To meet the requirements of the process the door of the retort is required to be large enough to enable the cans or other containers to be readily and quickly placed in and removed from the retort; it must be heavy to withstand the pressure of the steam; be capable of being opened and closed quickly; and to work efficiently it must be made absolutely steam-tight. The device of the patent is designed to meet these necessities, and, briefly described, is constructed substantially as follows: The door is not itself hinged to its frame



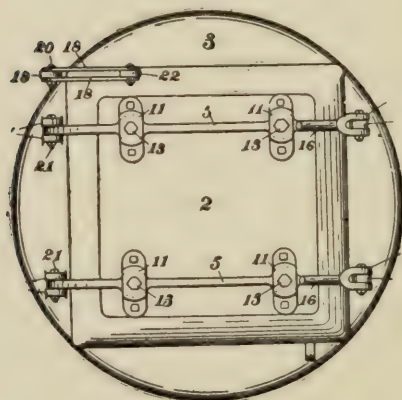
but is swung on two bars called pressure bars, which pass horizontally through housings secured to its outer surface or face, and these bars form the hinges for the door, being hinged at one end to the door-frame in such manner that when the door is swung to it closes squarely in its seat, the other end of each bar being engaged and secured by a cam connected with a link hinged to the opposite side of the frame. When closed the door bears against a gasket of suitable material set in a channel in the inner face of the frame, and is pressed firmly and evenly against the gasket by means of four screws passing through the housings and pressure bars and applied to its outer surface in such manner that when the pressure of the screws is applied the door fits at all points tightly on the gasket and thus prevents the escape of steam. The housings necessarily fit loosely upon the pressure bars to permit the door to respond to the pressure of the screws, and this looseness having a natural tendency to allow a play of the door upon the bars detrimental to its ready and perfect operation in closing, is avoided or taken up by employing what is designated as "radius links." This element and its function is thus described in the patent:

"The housings 11, as will be seen, permit some play of the bars 5, and the door 2 is not held rigidly thereby. To prevent lost or undesirable motion of this kind, I provide the radius-links 18, attached to the lug 19 on the door-frame and lug 22 on the door, the fixed pivot 20 being coaxial with the pivots 21 of the bars 5. The cams 10 are

made with more or less eccentricity, as the amount of pressure required, and when set for closing, as in Fig. II, the extreme of the eccentric passes the point of impingement, so the cam is locked or held against accidental release. In this manner it will be seen that the tendency of the door 2 to turn in its flat plane about the pivots 21 is resisted by the links 18, thus producing the effect of closely-fitting hinges and a true and steady movement of the door in opening and closing."

It is in this last-described feature that the novelty of the combination is disclosed, all the other elements being found in former patent issued to plaintiff in 1890. The subjoined drawing is a correct portrayal of the device.

DUNDON'S DEVICE



Defendant having need of retort doors for use in his fish-cannery in Alaska, purchased a number from plaintiff made in accordance with the patent as above-described and has been using them therein; but finding that he required an additional number, determined to construct them for himself. He accordingly procured castings to be made in San Francisco of the different parts, shipped them to his cannery and there assembled them. The doors thus built differ structurally from that of plaintiff in these particulars only: The pressure bars while attached to the door by housings in the same manner do not constitute hinges for the door, it being hinged independently to the frame by ordinary hinges loosely pivoted to admit of the door swinging flatly and evenly into its seat, and the door being closed the pressure bars are secured to the frame at both ends by appropriate fastenings. In other respects than serving as hinges these bars perform the same functions as in plaintiff's device, the pressure being exerted through screws passing through the housings and bars and pressing the door firmly upon the gasket. This loose hinging allowing, as in plaintiff's device, a play or sagging of the door interfering with its ready closing and adjustment in its seat, the defendant, to overcome that tendency, employs what he terms a "tie-rod," being a single bar or rod forming a tie or link pivoted to the door and frame in a precisely similar manner and in the same relative position, and performing exactly the same function as the so-called "radius-

links" of plaintiff's device. In all other respects the defendant's device is the duplicate of that of plaintiff. It is the use of this structure, and particularly the element called a "tie-rod," which it is claimed constitutes an infringement of plaintiff's patent, and whether it does or not is the one question presented, since non-infringement is the sole defense; and this defense is rested upon plaintiff's evidence, no testimony being taken on behalf of the defendant.

The question is made to turn upon the construction of claim 3 of the patent, that being the claim charged to have been infringed. The claim is in these words:

"3. In a hermetically-closing door, pressing-bars to force the door upon its seat, bearing at four or more points thereon, forming also hinges for the door, and in combination therewith the radius-links 18 pivoted in the same axial line as the pressing-bars and holding the door in adjustment thereon, substantially as specified."

That defendant's device constitutes an infringement of this claim is, I think, obvious unless the differences in structure above-noted can be held to be elemental and such as to change its co-operative or unitary action from that of the combination of the patent. Defendant's contention is that these differences are material and that its device cannot be held to infringe without ignoring certain limitations in the language of the claim which it is said constitute substantial features of plaintiff's invention, and which the Court is therefore



not at liberty to disregard. The first of these it is claimed is found in the words, "forming also hinges for the door," in describing the use of the pressure bars. It is said that this language expresses a functional limitation which restricts the combination to one in which the pressing-bars not only perform the function of pressure-bars but also the additional function of hinges for the door.

Is the difference in function between the two devices in this respect so material as to avoid infringement under the rule invoked? As indicated above, the whole element of novelty in plaintiff's combination is the means of taking up or avoiding the lost motion incident to the loose manner required in hanging the door where pressure-bars are employed. All other elements of the combination are old and covered by plaintiff's prior patent. Is the substitution of a patently equivalent means to perform one of the functions, and that a subsidiary one, of an old element of the combination, which works no essential change in the unitary result,—for that is obviously all the defendant's change involves,—sufficient to defeat plaintiff's right to protection of that which is new and valuable in his invention? It seems to me that such a result would be subordinating substance to mere form, and I do not think the claim is to be given a construction so narrow. It is not an instance, to my mind, where form partakes of the substance, but the case it seems to me falls within the very salutary principle announced in *Wi-*

*nans v. Denmead*, 56 U. S. (15 How.), 329, 342, where it is said:

“Where form and substance are inseparable, it is enough to look at the form only. Where they are separable; where the whole substance of the invention may be copied in a different form, it is the duty of courts and juries to look through the form for the substance of the invention—for that which entitles the inventor to his patent and which the patent was designed to secure; where that is found there is an infringement; and it is not a defense that it is embodied in a form not described and in terms claimed by the patentee.”

It is next contended that claim 3 restricts the combination to one in which “more than one link or tie-rod is used to keep the door in adjustment”; and it is said: “It will be noted that the word ‘links’ is in the plural, thus calling for at least two links or tie-rods. “It is not contended that defendant uses more than one “tie-rod in his device to keep the door from sagging. “It is obvious therefore that the defendant has dispensed with one of the elements of claim 3 and has “substituted nothing in its place. For this reason the “defendant’s device does not infringe.” But this contention has even less merit than the first, for it is quite obvious that it is based upon a clear misapprehension of the construction of plaintiff’s combination as contemplated and described in the patent. It, I think, sufficiently appears from the specifications, but very clearly from the drawings attached to the patent

(which may be looked to in case of doubt; *Walker on Patents*, section 182), that this feature of the device which is given a plural designation is but in fact a single element. It is doubtless given its plural name by reason of the fact that it is composed of two parallel pieces of metal of uniform length, both pivoted to the same lug at each end and forming but one link or stay,—being thus constructed, very likely, for additional strength. It is no less a single element as disclosed in plaintiff's combination than the "tie-rod" of defendant's device, which, as stated, is made from a single rod or bar, and like the latter is pivoted to the door and frame in the same manner.

It is further said of this element that it is given a functional limitation in the claim which distinguishes it from the office of the tie-rod of defendant's device. This is based upon the language, "pivoted in the same axial line as the pressing-bars and holding the door in adjustment thereon." And defendant says:

"According to this limitation the links 18 must both be pivoted in the same axial line in which the pressing-bars are pivoted. In the defendant's device, the pressing-bars are not pivoted at all and are not connected to the retort wall in the same axial line in which the single tie-rod is pivoted. It will also be noted that the words 'holding the door in adjustment thereon' are a functional limitation and restrict the combination to one in which two or more links or tie-rods hold the door in adjustment on the pressing-bars. In defendant's device, the door is not supported by the pressing-bars, but by the hinges. Therefore, the single tie-rod

used by defendant cannot hold the door in adjustment on the pressing-bars, which are, in fact, supported by the door. Such tie-rod or link merely prevents the door from sagging upon its hinges, thus keeping it in adjustment relative to the hinges and not relative to the pressing-bars."

These criticisms are largely answered by what has already been said. It is quite true that defendant's tie-rod is not pivoted in the same axial line with the pressing-bars, because the latter in his device do not, as we have seen, form hinges. But the rod or link is pivoted in an axial line with the hinges which defendant has substituted for the pressure-bars to perform that office; and while, as defendant says, his tie-rod cannot, for obvious reasons, hold the door in adjustment on the bars, it does hold it in adjustment on the substitute hinges, and, as heretofore shown, subserves the same purpose in that relation as the radius-links of plaintiff.

These considerations are sufficient, I think, to show that the differences in construction of the device of the defendant are not such as to avoid infringement of plaintiff's patent. Plaintiff is accordingly entitled to a decree as prayed.



No. 2462

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

L. A. PEDERSEN,

*Defendant and Appellant,*

vs.

PATRICK F. DUNDON,

*Plaintiff and Appellee.*

BRIEF FOR APPELLEE.

FRANCIS M. WRIGHT,

*Solicitor and Counsel for Appellee.*

Filed this.....day of November, 1914.

FRANK D. MONCKTON, Clerk

By.....Deputy Clerk.

Our contention is the opposite.

To be more specific, appellant contends that Dundon's language in his specification shows his intention to limit his invention in claim 3 to the particular form in which the pressing bars form also hinges for the door.

We contend that it does not show this.

Let us critically examine the specification.

The patentee begins by stating the art to which the invention relates, namely, doors for hermetically sealing retorts, digesters or other vessels that sustain internal pressure, and to certain improvements in devices for hinging, closing and securely sealing such doors, and he specially states that the invention is an improvement on an invention described in Letters Patent No. 418,867, granted to him almost ten years earlier.

By thus, in the first part of his specification, referring to his earlier patent, he disclaims as part of his present invention anything that was shown in said earlier patent. It is therefore of the greatest importance to examine carefully this earlier patent, for, obviously, any construction found in said earlier patent could not possibly be claimed in the later patent, and, by expressly calling attention to the earlier patent, and stating that the present invention is an improvement on said earlier patent, the patentee disclaims as part of his present invention any feature which is found to exist in said earlier patent.

Now in said earlier patent of 1890 we find that the door D, instead of being at the side of the digester, as in the present patent, is at the bottom of the digester, and it is held in place by a curved arm or bar E, pivoted at F, which arm E forms a pressing bar, pressure being applied to the door D by means of a screw L screwed through a hole in the arm or bar E. A link H is hinged to the body of the digester, as shown at I, which link H passes through the forked outer end of the bar E, and an eccentric or cam J bears against said outer end and presses the screw against the door of the digester.

Now, upon comparing the bar E, link H and cam J of the 1890 patent with the bar 5, link 14 and cam 10 of the present patent we find that they are practically the same. The only difference is that the pressing bar E in the 1890 patent has only one screw through it, whereas the pressing bar 5 of the 1900 patent has two screws through it. But, so far as the pressing bar serving as a hinge is concerned, the two patents show precisely the same construction. The pressing bar E of the 1890 patent serves as a hinge in precisely the same manner as the pressing bar 5 of the 1900 patent serves as a hinge.

It is evident, therefore, that Mr. Dundon in his patent of 1900, by expressly calling attention to the patent of 1890, and by stating that the invention of 1900 was an improvement upon said patent, *disclaimed* the pressing bar serving as a hinge as

being part of his later invention, since the constructions in the two patents are precisely identical in this respect.

Obviously, then, in order to negative such disclaimer it would be at least necessary that he should positively assert in some other part of the specification of the patent sued on that to make the pressing bars serve as hinges *was* a part of his later invention. While there is certainly language in the specification, which, if carelessly read, might be construed to signify that Mr. Dundon was making a claim for this feature, a careful examination shows that such was not the case.

To continue the examination of the specification, we find that the next two paragraphs are in the wrong order. In the paragraph beginning on line 22 of page 1 he next goes on to say of what the invention consists, and in the paragraph beginning on line 35 what are the objects of the invention. Undoubtedly the proper order is first to state what are the objects of his invention and then to state how he achieves these objects. It will facilitate the inquiry if we take first the statement of the objects, as contained in the paragraph beginning line 35.

It will be observed that the patentee says that one object of his invention is to utilize the bearing bars as hinges.



Counsel for appellant contends that this means that Mr. Dundon claims as his *present* invention the utilization of the bearing bars as hinges.

But there is quite a difference between the two following statements:

(1) My invention consists in utilizing the bearing bars as hinges.

(2) The object of my invention is to utilize the bearing bars as hinges.

The first is a statement of the *invention*. The second is a statement of the *object* of the invention.

The first is a statement of the newly discovered *means* for attaining an end. The second is a statement of an *end* to be attained, without stating what are the means for attaining that end.

If the patentee had merely said: "My invention consists in utilizing the bearing bars as hinges", then he would have been claiming the means to an end, the means being the utilization of the bearing bars as hinges, and the end being to expedite the opening and closing of the door.

But he does not say this. He says that: The object of the invention is to attain a certain end, namely, to utilize the bearing bars as hinges. How he achieves this result is explained in the previous paragraph.

But before we consider the statement of how he accomplishes this object, it may first be desirable to explain how the difficulty arises necessitating

the exercise of inventive skill to find means for accomplishing the object. In other words, seeing that Mr. Dundon had already, in his patent of 1890, shown a bearing bar acting as a hinge upon which the door swings, and serving with the screw to press said door to its seat, why should he now say that one *object* of the invention is to utilize the bearing bar as a hinge on which the door may swing. The reason is to be found in the difference in the size, position and pressure to which it is subjected, of the 1900 door as compared with the 1890 door.

The door of the 1890 patent dropped downwards and was used for discharging the contents of digesters used for rendering lard, tallow and other like matters. These being discharged in liquid form, the opening through which they were discharged needed to be only a comparatively small one, and consequently the door for closing said opening was also small. Consequently only a single pressing bar was needed, and the pressure exerted by a single screw through the pressing bar at the center of the door was sufficient to tightly close the door.

The digester door which is the subject of the present patent is of a different character. These digesters are used for cooking canned salmon and other canned goods by means of steam, defendant's digesters having been used for cooking canned salmon. The doors of these digesters or retorts

are quite large to enable the cans to be quickly placed in and removed from the retort; they are heavy to withstand the pressure of the steam; they must be capable of being opened and closed quickly; and at the same time they must be absolutely steam-tight.

The simple construction shown in the earlier patent of 1890, in which there is a single pressing bar forming also a hinge for the door and a single screw through said bar, is no longer sufficient.

The single bar of the 1890 patent would no longer give celerity of action in opening and closing the door, would no longer prevent leakage, and, unless special means were provided, the patentee could no longer utilize the bearing bars as hinges on which the door could swing, but must adopt another construction.

Therefore, the patentee seeks to devise means whereby these ends can be attained with *any* door, and not alone a small, horizontal, downwardly dropping door such as shown in the 1890 patent.

The patentee then, in the paragraph, lines 21-32 of page 1, states in general terms of which the present invention consists. The improvements are in three respects, as follows:

(1) "Two or more bars that span the door, bearing usually at four points thereon, so selected as to equalize the pressure around the sealed joints and utilize the full strength of the door itself in resisting the compressing strain."

(2) "The manner of hinging the doors by means of the bearing bars and a compensating link pivoted coincident therewith."

(3) "Other structural devices which will be particularly pointed out and explained by the aid of the drawings herewith and forming a part of this specification."

We do not find, in this statement of the improvements made by the patentee, any language from which it can be inferred that the patentee intended to claim the use of the bearing bars as hinges. What he really intended to claim was the new feature, the compensating link or radius link used with a door having bearing or pressing bars and of such construction that the radius link is necessary or desirable.

There is not a single part of the specification which really implies that Mr. Dundon, in his later patent, intended to claim the use of the bearing bars as hinges. In pages 3 and 4 of appellant's brief are found extracts from the specification of the patent in suit, in which extracts the parts supposed to imply that Mr. Dundon claimed the use of bearing bars as hinges are printed in italics. The first language thus italicized is the word "hinging". But is not a radius link an improvement in "hinging, closing and securely sealing such doors"? It will be observed also that in the paragraph here quoted appellant omits the reference expressly made by Mr. Dundon to his earlier patent



disclosing the use of bearing bars as hinges, which reference is an implied disclaimer that such use is a part of his present invention.

The next language italicized is in the second paragraph after the word "also". If one were to pay attention only to the part italicized, this part would be a bald statement that the invention "consists in the manner of hinging the doors by means of the bearing bars". But this is not the statement. The statement is that it "consists in the manner of hinging the doors by means of the bearing bars *and the compensating link* pivoted coincident therewith". If the hinging of the doors by means of the bearing bars alone were claimed to be a part of the invention, then the next words would have begun "and *in* a compensating link" just as in the words used a little later "and *in* other structural devices".

The third paragraph quoted, and the whole of which is italicized, simply states the *object* of the invention and not the invention itself and has already been discussed.

The next language italicized is merely a general statement of the nature of this class of doors, and is not an assertion that a particular contrivance, to use the bearing bars as hinges, is the means for attaining the object spoken of.

The contention that Mr. Dundon in the patent sued upon claimed the use of the bearing bars as

hinges has thus, we think, been effectually disposed of.

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**WHAT IS THE UNITARY IDEA EMBODIED IN CLAIM 3  
SUED ON?**

Appellant in page 5 of his brief states that "the combination of claim 3 must be considered as a unit distinct from its parts". With this statement we entirely agree. Every claim properly drawn is a "unit". What is meant by a "unit"? Does it not mean that the claim expresses the embodiment of a single original idea, a single inventive thought? If it does not mean that, it means nothing. If a person uses this original idea, this inventive thought, without the consent of the inventor, he infringes. It is, therefore, very important to accurately determine what is the single original idea, the single inventive thought, embodied in the combination of claim 3.

If we examine this claim we find therein a pressing bar forming also a hinge for the door, which is old, and radius links, which are new. Pressing bars bearing at four or more points thereon are also old as a matter of fact, although it does not appear from the record, but whether this feature is old or not is immaterial, since appellant also uses this feature. It is evident, therefore, that the radius link forms the nucleus of the single inventive thought embodied in the combination of this claim 3. It is therefore important to obtain an

exact understanding of the reason for this radius link.

Why is the radius link necessary?

It will be seen by reference to figure 3 of the patent in suit that the housings 11 which are rigidly secured by screws to the door 2 fit loosely over the pressing bars 5. Indeed, there must be this loose fit or lost motion to allow the screws to operate and transmit the pressure from the bars to the door at four different points thereon. There is, therefore, some play or looseness between the door and the bars. The door, not being directly hinged to the digester, and being supported loosely upon the bars, tends to sag to one side. When closed, the door bears against a gasket of suitable material set in a channel in the inner face of the frame of the retort or digester. But, if the door is loosely supported by the bars, it would not fit squarely and properly against this gasket, but would have to be pushed into place by a workman, and held there while the screws were being screwed up or the cams were being applied. This looseness the patentee remedies by the employment of what is termed in one place a compensating link and in another radius links. The compensating or radius link is a link, and not a hinge, because it is pivoted not only to the door frame but also the door, and it is called a radius link because it is pivoted to the door frame in vertical alignment with the hinges for the pressing bars, so that the part of the door

connected to one end of the link moves about the other end in a circle of the same radius as that about the hinges. This radius link prevents the door from longitudinally shifting on the pressing bars, although it does not prevent the door from moving to or from the pressing bars, such movement being required for the operation of the screws.

This radius link or compensating link, so far as known, is entirely new in this connection or a similar one. The tie rod E in the patent to Unfried is entirely different from this radius link. It is nothing more than an ordinary brace of a gate. If, indeed, the wire marked J in the Unfried patent had been attached at its lower end to Unfried's gate, then it would more nearly resemble applicant's radius link, for it would have been pivotally attached at one end to the gate and at the other end to the gate frame. But the tie rod E is rigidly attached at both ends to the gate, and is nothing more than a different form of the well known diagonal brace of a farm gate.

Now in claiming this radius link it was necessary of course for the patentee to claim also such other elements as are necessary to make the radius link of any value. A claim for this single element itself, such as "radius links" would be meaningless. It is only when the new construction is used in combination with an old construction that any advantageous result is obtained. For this reason



it was necessary to explain in the claim *with what kind* of old construction the new construction can be used in combination and have any value. But while the patentee is bound by limitations (except obvious equivalents) of his new construction expressed in his claim, he is not strictly bound by limitations of the old construction as so expressed, but is entitled to protection of the invention used on any equivalent old construction.

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#### DOES DEFENDANT USE AN EQUIVALENT CONSTRUCTION?

The question now arises: What would be an equivalent old construction? The answer is that an equivalent old construction is one that could be used in the combination without changing the character of the unitary original conception embodied in the combination.

For instance, a weight is sometimes the equivalent of a spring and sometimes it is not. If the function of the spring is merely to produce a constantly acting force, and the production of a constantly acting force is the only function of the spring which enters into the unitary idea of the combination, then the weight is its equivalent, because the weight will do the same thing in the combination. But if, in addition to producing a constantly acting force, a spring is used to give an oscillatory movement, and this oscillatory movement forms part of the unitary idea of the com-

bination, then a weight, which does not give this oscillatory movement, is not the equivalent of a spring.

Now comparing defendant's structure with the combination of the third claim, we find that both structures have the radius link. Both structures have pressing bars to force the door upon its seat, bearing at four or more points thereon. Both *must* have such a construction that, while the door can swing in general in a circular movement to or from the retort, it may also be capable of a slight linear movement to or from said retort. This linear movement is absolutely necessary to allow the screws to act, so as to press the door tightly against all points of the seat on the door frame. In Mr. Dundon's device this slight linear movement, as well as the circular movement, is obtained by making the pressing bars which serve as hinges pass loosely through the housings which are secured to the door. In defendant's device the pressing bars do not serve as hinges, and therefore it is absolutely necessary that the hinges should be loose on the hinge pins to permit of the slight linear movement of the door to or from the retort which is necessary to permit the screws being applied at four or more points thereon. A little consideration will show that it is quite impossible for these screws to press the door at four or more points so that the door fits tightly against its seat in defendant's construction unless some play or looseness is allowed in the hinges. Moreover, the fact

that defendant had to adopt a radius link proves that this looseness of the hinges existed, and in fact it is a physical impossibility that it should not exist.

What we contend then is that, by making the door hinges loose upon the hinge pins, so as to permit of a direct linear movement of the door to and from the retort, defendant did not avoid infringement, for he adopted the same unitary idea which was the invention of applicant.

To make the pressing bars form also the hinges of the door was *not* a part of this idea, having been invented and patented ten years earlier. *Any* construction that would permit of the door having a direct linear movement to and from the door frame would be the equivalent, *in this combination*, of making the pressing bars serve as hinges, because, in an embodiment of the unitary idea in the combination, they both serve the same purpose.

But since it is clear that defendant used a construction which permitted the door to have direct linear movement, as well as a circular movement, to and from the door frame, he used the equivalent feature in question and therefore did not avoid infringement.

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#### APPELLANT'S CITATIONS.

As regards the reference on pages 6, 8, 9 of appellant's brief to functional limitations, we have never contended that a functional limitation is to

be treated otherwise than a structural limitation. The rule with functional limitations, as with structural limitations, is that only that part of the function which enters into the unitary idea embodied in the combination cannot be ignored, and whatever substitute performs the same function *in the combination* is a mechanical equivalent. So where it appears that the function was intended to be made an essential element of the claim, it cannot be disregarded. But where such does not appear to have been the case, any function which does not relate to the inventive thought embodied in the claim may be ignored.

The words "forming also hinges for the door" define for what kind of a door the radius link is necessary, namely, for a door having both a circular, and a direct linear, movement, to and from the door frame. The word "hinges" shows that it has a circular movement and the words (pressing bars) "forming also" show that it is capable of a direct linear movement, because they show that the door is *not directly* hinged to the door frame, but is hinged by means of the pressing bars on which the door is *loosely* supported.

The use of these words then, and the only use, *in this combination*, being to express a very essential condition of the combination, viz: that the door should be capable of a direct linear, as well as a circular, movement, any construction in which the same condition is found is a mechanical equivalent.



lent, even though it does not also give the additional advantage expressed by said words, which was disclosed and patented long before, and is not material to the present invention.

Referring to the case of *O. H. Javell Filter Co. v. Jackson*, cited on pages 7, 8, of appellant's brief, attention is requested to the words "that are not evasions" in line 4, page 8. We contend that defendant's construction is a very obvious evasion of complainant's improvement.

Comparing the present claim with the claim in *Computing Scale Co. v. Keystone Store Service Co.* (page 9, appellant's brief) it cannot be said that the words "forming also hinges" in the present claim mean nothing in the combination. It has just been shown that they alone express a very essential condition of the combination, namely, that the door has both a circular and a direct linear movement.

Referring to the decision in *American School Furniture Co. v. Sander Co.* (page 13, appellant's brief) it is sufficient to say that we maintain that defendant *did* "substitute (something) equivalent thereto".

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#### RECAPITULATION.

To recapitulate the reasons why defendant's construction should be held to be the equivalent of the first limitation above referred to, namely, the use of pressing bars as hinges.

Complainant's patent of 1900 differs from his patent of 1890 in the inclusion of the radius link. This radius link was devised because it is necessary that the door should be supported on the door frame so as to be capable, not only of a circular movement like the door of a safe, but also of a slight linear movement to and from the door frame. This linear movement is necessary to enable the door to be pressed against the door frame with an absolutely steam-tight joint at all points. This steam-tight joint could not be attained with certainty with a purely circular movement. There must be, in addition, some capability, of linear movement. And it is this capability of linear movement, possessed by a large and heavy door, such as the door of a steam cooker, which requires the radius link to be used. This radius link must be pivoted at one end to the door frame in vertical alignment upon the hinges of the door, and at the other end to the door at a point between, or at least not outside of, the pressure screws, that is, to a mediate point of the door. Without this radius link, on account of the loose pivots, the upper part of the door would move inwards on the lower pivot. In that case the door would not fit accurately against the frame. The provision of this radius link insures this accurate fit and insures a steam-tight joint when the door and the frame come together.

It was old to hinge a door to a door frame and to secure thereon pressing bars so that the door

can have a slight linear movement to and from the door frame, this being shown in Dundon's earlier patent in 1890. The second requirement, the radius link, was not embodied by him at that time, because the door was comparatively small and, instead of swinging horizontally, swung vertically and therefore there was no need of this device.

When he came to apply the pressing bars of 1890 to a door of much greater size and weight and which swung horizontally instead of vertically, he discovered that his invention of 1890 was not applicable to such a door, and it was only when he devised the radius link pivoted at one end to the frame in vertical alignment with the door hinges and at the other end to a portion of the door between the pressing bars, that he made the door a success.

Now comes defendant and attempts to avoid this claim by not making the pressing bars and hinges in one piece. The idea embodied in the combination of claim 3 is not the making of the pressing bars and hinges in one piece, since that was disclosed in complainant's patent of 1890. The novel idea was the employment of a radius link. Complainant in claim 3 recites the radius link, and the pressing bars disclosed in the specification and drawing, which is evidently the preferable construction. It is the preferable construction, because it saves time in the opening and closing of the door. But this saving of time in the opening and closing of the door is not the result or function

for which the combination of the claim is intended, but is an old idea, having been disclosed in complainant's patent of 1890. Defendant, in trying to avoid infringement, gives up this advantage of saving time in the opening and closing of the door, but must still be held to infringe claim 3. The purpose of the combination of claim 3 is not to save time in the opening and closing of the door, but to insure a steam-tight fitting joint all around the door.

“The capability of fewer—uses by reason of its new connections—is a change consistent with the preservation of the identity of the patented invention, and with its wrongful appropriation by the alleged infringer.”

Robertson on Patents, Vol. 3, pp. 49-50.

In the case of *Coupe et al. v. Weatherhead et al.*, 16 Fed. Rep. 673:

“The defendants at one time used a machine which closely resembles that of the plaintiffs’—in the legitimate attempt to avoid infringement of the plaintiffs’ invention, which the defendants intended to copy as far as they lawfully might, because they had failed to come to terms with the plaintiffs for a license, they now put into the trough a piece of board, supported at either end upon blocks, about one-third of the width of the trough. The operation of the machine as thus modified is known only to the defendants themselves, and Mr. Weatherhead testifies that it exerts a pressure upon the hide, how great in pounds we do not know. We understand him to say that by passing the hide through the machine several times all parts come sooner or later under the



board, and thus substantially all the stretching is done by its aid.

“Infringement of the plaintiffs’ first claim is not escaped by the use of this piece of board, for, although it causes the defendants’ machine to approach more nearly the old belt-stretcher, still the operation must remain to some extent at least like that of the patent. The manipulation with the table and grooves must enable the operator to use all the elements of the first claim upon two-thirds of the width of the hide each time it passes through the machine, and it depends altogether on the thickness and stability of the board whether the whole operation is or is not copied. The very presence of this removable board is evidence that the old machine is not satisfactory for the new use.”

This case is even stronger than that, for in that case the change made by the infringers in the elements of the combination appreciably diminished the effectiveness of the combination in performing the function for which said elements were so combined. In the present case the change in the elements does not diminish in the least the effective performance of the function or idea which the combination of claim 3 is intended to embody, namely, to insure a steam-tight fitting joint all around the opening. It only diminishes the effective performance of an entirely different function or purpose, namely, it reduces the celerity with which the door can be opened and closed.

In regard to the distinction which appellant draws between “links” and “link”, on turning to

appellee's patent, we at once see that the use of the plural for the singular in speaking of the radius link simply arose from the fact that, for convenience of construction, the patentee employed *two* links 18, the respective ends of which extended on opposite sides of the lug 19, and on opposite sides of the lug 22. No reason is given in the patent for using the two links 18 instead of one. It is evident that the two links move together like a single link or bar and perform the same function, and really constitute a single link, and on page 1, line 30 of the patent, it is termed a *link* and that therefore a single bar is a mechanical equivalent of the two bars.

“A claim for means for operating a washing machine, one element whereof is a double row of teeth or cogs upon the cylinder of shaft, is infringed by a device wherein each element is present excepting the double row of teeth or cogs, for which is substituted a single row of teeth or pins, operating in substantially the same way to produce the same result, and obviously designed to evade the wording of the claim in suit.”

Benbow-Brammer Mfg. Co. v. Simpson Mfg. Co. et al., 132 F. 614.

“The substantial identity of the Walker and Birkenhead rests is not affected by the circumstance that in that of the former it is composed of one part, while that of the latter is composed of two.”

Eames v. Worcester, 123 Fed. 67.

The third limitation is expressed in the words "in the same axial line as the pressing bars and holding the door in adjustment thereon".

Since the patentee contemplated using the pressing bars also as hinges for the door, the words "in the same axial line as the pressing bars" are evidently equivalent to "in the same axial line as the hinges" the terms "pressing bars" and "hinges" being then interchangeable. Therefore the difference in terms expressed by the words "in the same axial line as the pressing bars" instead of "in the same axial line as the hinges" is simply a repetition of the former limitation, that the pressing bars are also hinges.

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#### SUMMARY.

1. Mr. Dundon has made at different times two separate and distinct improvements, viz.:

A. Making a pressing bar and hinge in one piece, covered by his patent of 1890.

B. Adding a radius link for a horizontally swinging door, having four or more pressure points, covered by claim 3 of his patent of 1900 in suit.

2. The object of making invention A was to save time in opening and closing the door.

The object of making invention B was to hold the door in adjustment on its seat.

3. Claim 3, sued on, was intended to protect invention B, not invention A, which was already protected by the 1890 patent.

4. The above-stated "holding in adjustment" was only necessary when the door was not tightly hinged to the frame.

5. Hence it was incumbent on the patentee to include in the claim the construction on account of which the door was not tightly hinged to the frame.

6. He therefore included the construction actually used.

7. But, if the cause of the evils to be overcome by the invention (the door not being tightly hinged to the door frame) is the same, and the means (the radius link) invented for overcoming the evils, are the same, the particular character of the construction producing this cause does not affect or change the identity of the invention.

8. Hence, any construction on account of which the door is not tightly hinged to the frame is the mechanical equivalent, in the claim, of the construction specified.

9. In defendant's construction the door could not be tightly hinged to the frame, for if it were,

(a) The pressure screws could not act.

(b) There would be no use for the radius link.



10. Hence defendant used the same idea of means for holding the door in adjustment on its seat which is covered by claim 3, and infringes.

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In regard to the second alleged error of the lower court, namely, that plaintiff is entitled to recover both damages and profits, we respectfully submit that there was no error, for the reason that the language of Section 4921 of the United States Revised Statutes is, in part, as follows:

\* \* \* “and upon a decree being rendered in any such case for an infringement the complainant shall be entitled to recover *in addition to the profits* to be accounted for by the defendant, *the damages* the complainant has sustained thereby; and the court shall assess the same or cause the same to be assessed under its direction.”

Dated, San Francisco,

November 9, 1914.

Respectfully submitted,

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